(30,369)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 410

STATE OF ARKANSAS *EX REL.* J. S. UTLEY, ATTORNEY GENERAL OF THE STATE OF ARKANSAS, FOR THE USE AND BENEFIT OF CRAIGHEAD COUNTY, ARKANSAS, PLAINTIFF IN ERROR,

vs.

ST. LOUIS–SAN FRANCISCO RAILWAY COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 28, 1924

[fol. 1] IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF ARKANSAS ex Rel. J. S. UTLEY, Attorney General of the State of Arkansas for the Use and Benefit of Craighead County, Arkansas, Plaintiffs in Error,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and MISSOURI PACIFIC RAILROAD COMPANY, Defendants in Error

STIPULATION RE TRANSCRIPT OF RECORD

It is stipulated by and between the undersigned counsel for parties in the above entitled cause that the record to be attached to the writ of error or to any petition for writ of certiorari in the above entitled cause, shall consist of pages 1 to 96 of the printed abstract appearing in "Abstract and Brief in Behalf of Appellants," filed in the Supreme Court of Arkansas in the above entitled cause, except that the writ of mandamus shown at pages 35 and 36 be corrected after the word "assessment" in the 14th line on page 36 by adding the words: "made hereunder shall be at least double the amount of the total assessment," these words being erroneously omitted in the printed abstract, together with subsequent proceedings had in this cause in the Supreme Court of Arkansas.

State of Arkansas ex Rel. Attorney General of the State of Arkansas for the Use and Benefit of Craighead County, Arkansas, by J. S. Utley, Attorney General. St. Louis-San Francisco Railway Company, by N. J. Orr, Its Attorney. Missouri Pacific Railroad Company, by Thos. B. Pryor, Its Attorney.

[fol. 2] IN THE CHANCERY COURT FOR THE WESTERN DISTRICT OF CRAIGHEAD COUNTY, ARKANSAS

No. 2281

STATE OF ARKANSAS ex Rel. J. S. UTLEY, Attorney General of the State of Arkansas for the Use and Benefit of Craighead County, Arkansas, Plaintiff,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Defendant

No. 2282

STATE OF ARKANSAS ex Rel. J. S. UTLEY, Attorney General of the State of Arkansas for the Use and Benefit of Craighead County, Arkansas, Plaintiff,

vs.

MISSOURI PACIFIC RAILROAD COMPANY, Defendant

Pleas before Hon. J. M. Futrell, Chancellor for the Western District of Craighead County, Arkansas, on the 22 Day of August, 1923

[fol. 3] ABSTRACT

This appeal is taken from two cases consolidated below, both of which were brought under the Corporation Overdue Tax Act of Arkansas, one of the cases being against the St. Louis-San Francisco Railway Company as defendant and the other being against the Missouri Pacific Railroad Company as defendant. On account of the fact that the issues involved, both of fact and of law, were the same, the causes were consolidated below. The cases involve the validity of a Federal court mandamus requiring the assessing authorities to assess property at full value in Craighead County.

[fol. 4] IN CHANCERY COURT OF CRAIGHEAD COUNTY

(Caption omitted)

BILL OF COMPLAINT

Complaint Against St. Louis-San Francisco Railway Company

On July 19, 1923, complaint was filed against the above company, which, after stating the corporate existence of the said company, and also of the Bonnerville-Southwestern Railroad Company, and that the Frisco was liable for the taxes of the last named company, alleged that:

(3). On the — day of ——, 19—, the Maccabees, as plaintiff, filed their suit in the United States District Court for the Eastern District of Arkansas, Jonesboro Division, against Craighead County, as defendant. A true copy of said complaint, marked exhibit "A"

is attached hereto and asked to be considered as part of this complaint.

(4). On December 7, 1920, the defendant, Craighead County, filed its answer to said complaint. A true copy of said answer marked exhibit "B" is attached hereto and asked to be considered as part of this complaint.

(5). On February 17, 1921, the United States District Court for the Western Division of the Eastern District of Arkansas, to which division said cause had been removed by agreement, rendered a judgment in favor of the Maccabees against Craighead County in the sum of $77,680. A true copy of said judgment, marked exhibit "C" is attached hereto and asked to be considered as part hereof.

[fol. 5] (6). On March 2, 1921, the Maccabees, in the name of the United States, filed their petition for mandamus against L. G. King, as assessor of Craighead County, C. R. Cordell, A. C. Martineau and Monroe Smith, as the State Tax Commission of the State of Arkansas, and W. H. Fuller as county judge of Craighead County, as defendants, to require the said assessing authorities to assess the taxable property on the basis of a full value assessment in order not to defeat the petitioner in the collection of its debt. A true copy of said petition, marked exhibit "D" is attached to this complaint and asked to be considered as part thereof.

(7). Summons upon said petition for mandamus was duly served upon all the parties defendant thereto. A certified copy of said summons, marked exhibit "E" is attached to this complaint and asked to be considered as part thereof.

(8). On April 7, 1921, a judgment by default was rendered on said petition for mandamus by said District Court of the United States for the Western Division of the Eastern District of Arkansas, and said court did order, consider and adjudge that a mandamus issue requiring said defendants to assess at its full value in money all property in Craighead County, and to continue said assessment at its full value until judgment of plaintiff should have been paid in full; and it appearing that the property in said county had theretofore been assessed at not exceeding 50% of its true value, it was ordered by the Court that said mandamus require that the total assessment made thereunder should be at least double the amount of the total assessment theretofore made. A true copy of said order of mandamus, marked exhibit "E" is attached hereto and asked to [fol. 6] be considered as part of this complaint.

(9). Said order for writ of mandamus was duly served upon the defendants in said cause.

(10). In pursuance of said mandamus the tax assessor of Craighead County assessed, for the taxing year 1921, all taxable property assessable by him at its full value for the purpose of general county taxes, instead of upon the usual basis of 50% of the said true value.

The State Tax Commission in accord with previous custom, ascertained and determined fifty per centum of the true value of the property of all public utilities, including that of the defendant, located in Craighead County, but directed the tax assessor of said county, in extending said assessment upon the tax books of the county, to extend same at full valuation, as required by the order of mandamus. That the assessor, in compliance *of* said direction of said Tax Commission, so extended the assessment upon the county assessment book.

(11). That the assessment against defendant railroad company for the year 1921 was as follows:

(a) Memphis Division

	50% valuation	100% valuation, Co. general purposes
Main track 26.79 miles $24,000 per mile..	$642,960	$1,285,920
Side track 12.45 miles, $3,000 per mile...	37,350	74,700
[fol. 7] Rolling stock 26.79 miles $4,000 per mile.....	107,160	214,320
Valuation of buildings.....	22,570	45,140
Value of material and stores of every kind	6,550	13,100
	$816,590	$1,633,180

(b) Bonnerville-Southwestern Railway Company Branch or Division

Main track, 18.69 miles $4,000 per mile..	$74,760	$149,520
Side track, 1.34 miles $3,000 per mile....	4,020	8,040
Rolling stock, 18.69 miles, $300 per mile.	5,607	11,214
Building valuation.....	1,200	2,400
Value of materials and stores of every kind	10	20
	$85,597	$171,194

(12). That the quorum court of Craighead County, for the taxing year 1921, levied county general tax at the rate of five mills on the dollar; that county general taxes due by said defendant for the year 1921 were as follows:

(a) To county general tax of five mills on the dollar for the taxing year 1921 on $163,180 representing full value assessment on Memphis division.....	$8,165.90
[fol. 8] (b) To county general tax of five mills on the dollar for taxing year 1921 on $171,194, representing full value assessment on Bonnerville-Southwestern Branch	857.97
Total taxes.....	$9,021.87

(13). That in the year 1922, during the regular tax collecting period for taxes of 1921, the defendant paid to the collector of revenue all taxes upon its property except the county general taxes above mentioned. That by failure to pay said taxes within the time prescribed by law a penalty of 25% has accrued thereon, and the plaintiff should recover not only said penalty, but al-o interest on said county taxes at 10% per annum from April 10, 1922, until payment of said amount.

(14). In pursuance of said mandamus the property of the defendant was assessed for the taxing year 1922 as follows:

(a) Memphis Division

	50% valuation	100% valuation for Co. general purposes
Main track, 26.79 miles, — per mile.....	$616,170	$1,232,340
Side track, 12.83 miles $3,000 per mile...	38,490	76,980
Rolling stock, 26.79 miles, $4,000 per mile	107,160	214,320
[fol. 9] Valuation of buildings.....	17,835	35,670
Value of materials and stores of every kind	4,200	8,400
	$783,855	$1,567,710

(b) Bonnerville-Southwestern Railroad Company Branch

	50% valuation	100% valuation for Co. general purposes
Main track, 18.69 miles $3,000 per mile...	$56,070	$112,140
Side track, 1.10 miles $3,000 per mile...	3,300	6,600
Rolling stock, 1.10 miles $3,000 per mile.	5,607	11,214
Building valuation.....	600	1,200
Valuation of materials and stores of every kind	10	20
	$65,587	$131,174

(15). That the county quorum court for Craighead County levied for the taxing year 1922 a general county tax of five mills on the dollar. That the county general tax of five mills on the dollar for the taxing year 1922 on $1,567,710, representing the full valuation assessment for county general purposes of the Memphis Division of the defendant, amounted to the sum of $7,838.55. The county general tax of five mills for taxing year 1922 on $131,174, representing full valuation assessment for county general purposes on [fol. 10] the Bonnerville-Southwestern Railway Company branch, amounted to the sum of $655.87. Total taxes, $9,021.87. That in 1923 the defendant, during the regular tax-collecting period of the taxes of 1922, tendered to the collector all taxes due on said property,

except said county general taxes, no part of which has been paid. That by reason of failure of said defendant to pay said taxes for the year 1922 said defendant is liable for a penalty of 25% thereon for delinquency in payment, and also for interest at 10% per annum from April 10, 1923, until paid.

(16). That defendant has claimed that said assessment so made by the Arkansas Tax Commission of its property was not legally or properly made. For said reason this suit is brought under and in pursuance of Sections 10204-10214 of Crawford & Moses Digest of the Statutes of the State of Arkansas. If the court shall decide that said assessments as thus extended, or any one of them, was not made as required by law, the court is asked to refer the assessment of said property to the members of the Arkansas State Tax Commission, or their successors, the Arkansas Railroad Commission, who are now charged with the duty of assessing the property of public utilities, for the purpose of having same reassessed. If no such valid assessment now exists or shall be made against said defendant, it will permit the defendant to escape its just and proportionate share of the county taxation, for the reason that all other taxable property in Craighead County for *the* both the years 1921 and 1922, in com- [fol. 11] pliance with terms of said Federal mandamus, paid their county general tax on the basis of full value assessment as provided by mandamus from said Federal Court.

(17). That said judgments of the Federal court pleaded in this complaint, not being appealed from and standing unreversed, became and are res adjudicata as to the right, power and duty of the assessing authorities to make said assessment on the basis of full valuation of the taxable property and the binding effect of the assessments so made upon taxpayers and taxable property coming within the scope of said judgment and action of said assessing authorities. To refuse to give effect to the judgments of the Federal court so rendered would be and is contrary to the Constitution and laws of the United States in that, from the very nature of our dual form of government, the State courts must give full faith, credit and effect to all judgments of the Federal court rendered within proper exercise of its jurisdiction, and would contravene also the provision of the Constitution of the United States that the Constitution and laws of the United States which shall be made in pursuance hereof shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the laws of any State to the contrary notwithstanding.

Wherefore, plaintiff prays that the court shall determine the amount of county general taxes due by defendant to Craighead County for both the taxing years of 1921 and 1922, and that the court render judgment for the amount of said taxes, together with 25 per cent penalty provided by law, plus interest at 10 per cent per [fol. 12] annum on the several amounts of said taxes from date of delinquency until date of repayment, together with all costs of this suit. That the court decree payment thereof and render judgment therefor, and that lien for said taxes, penalty and costs be decreed

against the whole line of the defendant railroad, including the main line, sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, tunnels, cuts, ties, trestles and bridges, and all lands in the State belonging to such corporation; that said property be ordered sold if said judgment be not paid within a short time to be fixed by the court; that a special commissioner in chancery be appointed to make said sale; and for other proper relief as contemplated by the corporation overdue tax act and any other law.

[fol. 13] IN THE UNITED STATES COURT, EASTERN DISTRICT OF ARKANSAS, JONESBORO, ARKANSAS

No. 6160

THE MACABEES

v.

CRAIGHEAD COUNTY

EXHIBIT "A" TO COMPLAINT

Complaint at Law

The plaintiff is a fraternal benefit society duly organized under the laws of the State of Michigan, while the defendant is a quasi-municipal corporation, created by the laws of the State of Arkansas, and a resident of this district.

On the 22d of March, 1916, the defendant county executed its certain series of warrants in the following form:

"Certificate Number 132

"United States of America

"State of Arkansas

"County of Craighead

"Funding Warrant Certificate

"This is to certify that, for value received, the county of Craighead, in the State of Arkansas, has become justly indebted to James Gould, of the City of Pine Bluff, State of Arkansas, in the sum of eighty-four thousand eight hundred and forty dollars, which it has agreed and promised to pay to said James Gould, his assigns or bearer, at the times and in the manner provided for and evidenced [fol. 14] by and upon the presentation and surrender of the warrants of said county hereto attached, and other similar warrants hereto attached the treasurer of said county has been and is duly authorized, ordered and directed to pay James Gould his assigns or bearer,

in full settlement of the respective sums evidenced by such warrants respectively, out of either the county general fund, the justice of the peace court fund, the election expense fund, the circuit court found, as shall be specially designated in each of said warrants, respectively. In the event at any time there should, upon the presentation of any of said warrants to the county treasurer for payment, be no money to the credit of the particular fund out of which they have been made specifically payable, then any such warrant shall be payable out of any other available fund of the county and in the county treasury that shall have not have been otherwise specifically appropriated.

"It is further certified that each of said warrants hereto attached have been duly executed, issued and delivered by said county in place of other warrants for like amounts and purposes, respectively, which other warrants heretofore called in for reissue, under the provisions of sections 1174 to 1179, both inclusive, of Kirby's Digest of the State of Arkansas, and which, after thorough examination and investigation as to the legality thereof, it was duly found by the county court that the indebtedness represented thereby, respectively, was in each case strictly legal and had each been duly issued and for the amounts respectively represented thereby.

[fol. 15] "It is further represented and certified, that the said county has received the full value and benefit of either labor or material to the full amounts equal to the sums of money represented by the warrants hereto attached, respectively, and that the claims represented by each of said warrants have been duly approved and they each have been duly ordered to be issued by the county court of said county.

"It is further certified and recited, that all conditions and things required by the Constitution and laws of the State of Arkansas to exist, be done and performed precedent to the lawful issuance of the warrants hereto attached do exist, have been properly done, happened and been performed in due and regular form and time as required by law; that warrants hereto attached have been issued in strict compliance with all of the requirements of the Constitution and laws of the State of Arkansas. It is hereby represented that sufficient provision has been made and will annually be made by tax levies for the prompt payment of the warrants hereto attached and other funding warrants delivered to said James Gould, as they severally become payable, until payment in full of all of said warrants, which tax, when collected, shall be exclusively applied to the payment of said warrants as they respectively mature.

"It is further certified and recited, that this certificate and the warrants to be hereto attached have been executed pursuant to an [fol. 16] order of the county court of said county directing such execution.

"Said tax shall be exclusively applied to the payment of said warrants as they become payable and shall be accepted by said county in payment of all debts and taxes due said county.

"It is expressly provided, it having been and is hereby agreed

that each and all of the warrants attached hereto, at the election of the respective holders thereof, shall become immediately due and payable, notwithstanding the date for payment stated in said warrants, respectively, in the event any one of them shall not be promptly paid when it becomes payable, or in the event the county court shall enter an order to call in outstanding warrants, including the warrants hereto attached, to redeem, cancel, reissue, or classify the same, or for any other purpose.

"In witness whereof, the county of Craighead, in the State of Arkansas, through its county court, and by its order with open doors, has caused this certificate and said warrants to be signed in its behalf by the clerk of its county court, under the official seal of the county, attested and countersigned by the county judge, as of the 22d day of March, A. D. 1916.

"County of Craighead, State of Arkansas, by J. C. Harrison, Clerk of the County Court of Craighead County, Arkansas.

"Attested and countersigned: R. L. Edward, County Judge of Craighead County, Arkansas.

[fol. 17] "568. County Warrant $30.00

"To the Treasurer of Craighead County, State of Arkansas:

"Pay to James Gould, or bearer, on August 1, 1920, or as much sooner than the date last named as the same shall become payable, pursuant to and subject to the terms and conditions of the order of the county court of said county pursuant to which this warrant has been issued, and as indicated in the funding warrant certificate to which this warrant is attached, and said county has accordingly agreed to pay the sum of thirty dollars out of the county general fund of said county, duly created for said purpose; or in event, when this warrant shall be presented for payment, no money shall be in said fund, then the same shall be paid out of any other available fund of the county in the county treasury that shall not have been otherwise specifically appropriated, which sum of money payable on this warrant shall be payable at the office of the county treasurer, in the city of Jonesboro, State of Arkansas, or, at the option of the holder thereof, at the banking house of the Mechanics and Metals National Bank, in the City and State of New York.

"This warrant, after it shall become payable, shall be receivable for all debts and taxes due said county.

"This warrant is one of an issue that has been issued in place of other warrants for like amounts and purposes, respectively, which other warrants were heretofore called in for reissue under the provisions of sections 1174 and 1179, both inclusive, of Kirby's Digest of the State of Arkansas, and which after thorough examination and [fol. 18] investigation as to the legality thereof, it was duly found by the county court that the indebtedness represented thereby, respectively, was, in each case, strictly legal, and had each been duly

issued and for the amounts respectively represented by the total issue of funding warrants, of which this is one.

"Given at the city of Jonesboro, State of Arkansas, this 22d day of March, A. D. 1916.

"(Signed:) J. C. Harrison, Clerk of the County Court of Craighead County, Arkansas.

"Attested and countersigned: R. L. Edwards, County Judge of said county.

"This is to certify that the claim against the county of Craighead, Arkansas, on which this warrant is based, has been duly approved and allowed by the county court of said county, and this warrant has been duly receipted for and registered as provided by law, this 22d day of March, A. D. 1916.

"J. C. Harrison, Clerk of the County Court, Craighead County, Arkansas.

"This warrant received from Craighead County, Arkansas, and the clerk of its county court. For value received, the undersigned hereby sells and assigns the same and the proportionate part of the original warrants to fund which this and other funding warrants have been issued above referred to, represented by it, to —— ——, or [fol. 19] bearer, and the undersigned hereby subrogates to the assignee or bearer hereof all right, title and interest, liens and claims in law of which are now or may hereafter be secured and accruing to the undersigned by said county, and the bearer is hereby authorized to collect the same and give full receipt and acquittance thereof in the name of the undersigned.

"James Gould, Payee of said Warrant."

[fol. 20] "Number 569

"500.00. United States of America $500.00.

"County Warrant

"To the Treasurer of Craighead County, State of Arkansas:

"Pay to James Gould, or bearer, on August 1, 1920, or as much sooner than the date last named as the same shall become payable, pursuant to and subject to all the terms and conditions of the order of the county court of said county pursuant to which this warrant has been issued, and said county has accordingly agreed to pay the sum of five hundred dollars out of the circuit court fund of said county, duly created for said purpose; or, in the event when this warrant shall be presented for payment, no money shall be in said fund, then the same shall be paid out of any other available fund of the county in the county treasury that shall not have been otherwise specially appropriated, which sum of money shall be payable at the office of the county treasurer, in the city of Jonesboro, State

of Arkansas, or, at the option of the holder hereof, at the banking house of the Mechanics and Metals National Bank in the City and State of New York.

"This warrant, after it shall become payable, shall be receivable for all debts and taxes due said county.

"This warrant is one of an issue that have been issued in place of other warrants for like amounts and purposes, respectively, which other warrants, heretofore called for reissue, under the provisions of sections 1174 to 1179, both inclusive, of Kirby's Digest of the State of Arkansas, and which, after thorough examination and investiga-
[fol. 21] tion as to the legality thereof, it was duly found by the county court that the indebtedness represented thereby, respectively, was in each case strictly legal, and had each been duly issued and for the amounts, respectively, represented thereby.

"Given at the city of Jonesboro, State of Arkansas, this 22d day of March, 1916.

"(Signed) By J. C. Harrison, Clerk of the County Court of Craighead County, Arkansas. By R. L. Edwards, County Judge of said County.

"This is to certify that the claim against the county of Craighead, Arkansas, on which this warrant is based, has been duly approved and allowed by the county court of said county, and this warrant has been duly receipted for and registered as provided by law, this 22d day of March, A. D. 1916.

"J. C. Harrison, Clerk of the County Court, Craighead County, Arkansas.

"This warrant received from Craighead County, Arkansas, and the clerk of its county court, for value received, the undersigned hereby sells and assigns the same and the proportionate part of the debt and contract price above referred to represented by it, to ——— ———, or bearer, and the undersigned hereby subrogates to the assignee or bearer hereof all right, title and interest, lien and claims in
[fol. 22] law, or which are now or may hereafter be secured and accruing to the undersigned by said county, and the bearer is hereby authorized to collect the same and give full receipt and acquittance thereof in the name of the undersigned.

"James Gould, Payee of said Warrant."

(Filed July 19, 1923. Sera E. Watkins, Clerk.)

[fol. 23] The plaintiff is the owner and holder, for valuable consideration, of the following warrants, of the same general tenor and effect.

Due August 1, 1917:			
30 at	$500.00	$15,000.00	
134 at	30.00	4,020.00	
			$19,020.00
Due August 1, 1918:			
30 at	500.00	15,000.00	
104 at	30.00	3,120.00	
			18,120.00
Due August 1, 1919:			
30 at	500.00	15,000.00	
74 at	30.00	2,220.00	
			17,220.00
Due August 1, 1920:			
44 at	500.00	22,000.00	
44 at	30.00	1,320.00	
			23,320.00
Total			$77,680.00

All of said warrants are long past due, and no part thereof has been paid, though the plaintiff has often demanded payment.

The plaintiff therefore prays judgment for the amount thereof.

Rose, Hemingway, Cantrell & Loughborough, Attorneys for Plaintiff.

[fol. 24] In the District Court of the United States for the Jonesboro Division of the Eastern District of Arkansas

The Macabees, Plaintiff,

v.

Craighead County, Defendant

Exhibit "B" to Complaint

Answer of Defendant

The defendant, Craighead County, through its county judge, W. H. Fuller, admits that the plaintiff is a fraternal benefit society duly organized under the laws of Arkansas, and that the defendant is a quasi-municipal corporation. It admits that on March 22, 1916, through its county judge then in office, defendant executed a series of warrants in substantially the form set out in the complaint, but denies that said warrants were duly issued pursuant to any law, and alleges that the attempted issuance of warrants in the form set out, purporting to be payable at specified times as therein set out, was at the time, and now is, irregular and without authority of law, and that

the recitals in said warrants were placed therein without authority of law and are not binding upon the defendant in any respect.

Defendant alleges that each of the warrants in denominations of $500 has attached to it another alleged warrant for the sum of $30 [fol. 25] payable at the same time as the warrant for $500 is due, and this defendant alleges that, regardless of the recitals in said warrants, the said warrants in denominations of $30 represent interest upon the warrants in denominations of $500 at the rate of 6 per cent per annum for one year, and said warrants are therefore illegal and issued contrary to the provisions of the Constitution of Arkansas, being an attempt to pay interest upon county warrants.

The defendant denies that Craighead county ever received the full value and benefit in either labor or material equal to the amount of warrants issued, and further denies that the said warrants were issued in lieu of previous county warrants for like amounts and purposes, and alleges that the alleged warrants sued upon herein exceed by approximately $39,000 the total amount of county warrants previously issued and surrendered to the said county upon the issuance of the warrants sued upon.

The warrants sued upon herein being issued in large part of interest illegally assumed, and in large part without consideration in other warrants surrendered, and bearing upon their faces recitals not authorized by law, and payable in manner and form not authorized by law, because payable on their face out of any funds the county might have in any separate account or fund, regardless of appropriations by the quorum court for specific funds, are wholly illegal and void, and the illegalities extend throughout all the said [fol. 26] warrants, so that no recovery can be had upon any of them in this suit, and plaintiff's only rights against the county grow out of the original consideration, if any, received by the county for such original warrants as were actually surrendered upon the issuance of the warrants sued for.

Wherefore defendant prays to be discharged with costs and all other proper relief.

(Signed) Basil Baker and Lamb & Frierson, Attorneys for Defendant.

Indorsed: Filed December 7, 1920. Sid B. Redding, Clerk, by W. P. Field, D. C.

[fol. 27] UNITED STATES OF AMERICA, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

EXHIBIT "C" TO COMPLAINT

Be it remembered, that, at a District Court of the United States of America in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the eighteenth day of October, Anno Domini one thousand nine hundred and twenty, at

the United States court room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge, presiding and holding said court, the following proceedings were had, to-wit on February 17, 1921:

"No. 6160

"The Maccabees

v.

Craighead County

"Now on this day came the parties by their respective attorneys and file their stipulation in writing, waiving a trial by jury; and the cause being submitted to the court on oral evidence and the record of the Craighead County Court, and the court being sufficiently advised in the premises, it is considered, ordered and adjudged that the plaintiff have and recover of and from the defendant the sum of $77,680, with all its costs herein expended.

"August 4, 1922.

On this date the sum of $333.44 is hereby credited on this judgment. Rose, Hemingway, Cantrell & Loughborough, Attorneys for Plaintiff.

[fol. 28] "August 1, 1922.

On this date the sum of $5,666.56 is hereby credited on this judgment. Rose, Hemingway, Cantrell & Loughborough, Attorneys for Plaintiff.

[fol. 29] Exhibit "D" to Complaint

In the United States District Court, Eastern District of Arkansas, Eastern Division

United States on Relation of the Maccabees, Plaintiff,

vs.

L. G. King, as Assessor of Craighead County; C. R. Cordell, A. C. Martineau, and Monroe Smith, as the State Tax Commission of the State of Arkansas, and W. H. Fuller, as County Judge of Craighead County, Defendants

Petition for Mandamus

The county of Craighead, in the State of Arkansas, prior to the 5th day of February, 1917, for valuable consideration, duly issued its certain warrants, payable out of its general revenue fund, to the amount of $77,680, and these warrants were acquired by the plaintiff for a like valuable consideration. The plaintiff brought suit at law upon said warrants in this honorable court, and such proceedings

were had in said cause that, on the 17th day of February, 1921, judgment was rendered in favor of the plaintiff for the total amount of said warrants, with costs, amounting to $77,680, which judgment is still in full force, unpaid and unreversed.

Besides the county warrants issued to the relator upon said date, other warrants have been issued by said Craighead County largely in excess of its revenues, and the county taxes are paid in such warrants. [fol. 30] On account of the issuance of such other scrip by said county in excess of its revenues, and the payment of the county taxes in county scrip, it will be ineffectual to attempt to enforce the payment of said judgment by mandamus to the county levying court of said county to require it to levy a special tax on the taxable property of said county for the purpose of paying said judgment.

The defendant, L. G. King, is the duly elected, qualified and acting assessor of Craighead County, and, under the Constitution, it is his duty to assess or value for purposes of taxation all the real and personal property subject to taxation in said county, except certain property which is assessed or valued for taxation by the State Tax Commission, at its true value in money.

The defendants, C. R. Cordell, A. C. Martineau and Monroe Smith, constitute the Tax Commission of the State of Arkansas, and and the said Tax Commission is vested by law with the power to raise or lower the assessment of any county in said State. Under the law, it is the duty of said Commission to assess at its true value in money the property to be assessed by it and to require the assessors of all of the counties of the State to assess the property within their jurisdiction at its true value in money. The said board has, however, failed to discharge this duty ever since its organization; and, on the contrary, it has issued to the assessing officers of the various counties [fol. 31] a request that all of the property in the State be assessed at 50% of its true value.

The relator alleges that the said assessor has failed, refused and neglected to discharge his duty, in that he has failed and neglected to assess or value for taxation and place upon the assessment books of said county a great deal of property, principally personal property, subject to taxation in said county and to assessment therein, and will, unless compelled by the mandamus of this honorable court, assess and value all the taxable property in said county at a rate not exceeding 50% of its true value.

The undervaluation of the taxable property of said county is a fraud upon the relator as a creditor thereof, and is a refusal of the said assessor and of the said Tax Commission to discharge their duties according to law.

If the taxable property of said county were assessed at its true value, as required by law, the revenues of said county, even at the low rate of taxation allowed by the laws of the State of Arkansas, would very soon be sufficient to discharge the said judgment, in addition to paying the ordinary and usual expenses of the county.

If the taxable property of said county is not assessed at its true value, as required by law, the relator will be unable to collect his said judgment against said county.

Unless required by authority of this court to discharge their duties according to law, the said assessor and the said Tax Commission will continue to undervalue the taxable property in said county subject [fol. 32] to taxation by said assessor, and thus defeat the relator in the collection of his judgment and other indebtedness of said county to him.

Under the laws of the State of Arkansas, it is the duty of the State Tax Commission to direct the county assessing officers to assess the property within their respective jurisdictions, at its full value in money, and the said assessing officers are required to obey the mandate of said Tax Commission.

In order to pay the judgment of the relator, it is necessary that a portion of the five-mill tax allowed by law — be levied by the county court of Craighead County, sitting as a levying court, be levied, making the same payable in United States currency, and payable only to the relator and to other holders of judgments against said county.

Your petitioner therefore prays for a writ of mandamus, commanding the State Tax Commission to require the said assessor and township boards of assessors to assess all property within their jurisdiction, at its true value in money; and also commanding the said assessor to assess and value for the year 1920, and for subsequent years until said judgment and all other indebtedness of said county to the relator shall have been paid, all of the taxable property of said Craighead County subject to assessment, at its full value in money, as required by law, to the end that all of the taxable property of said county, subject to assessment, be assessed at its true value.

And your petitioner further prays that the county Court of [fol. 33] Craighead County, sitting as a levying court, be required to make a levy out of its taxes for a general county purpose to the amount of two and one-half mills of the assessed value of the real property of the county, and that the amount so levied be payable only in United States money, and applied only to the payment of judgments recovered against Craighead County in this court, including the judgment of the relator.

Rose, Hemingway, Cantrell & Loughborough, Attorneys for Plaintiff.

[fol. 34] EXHIBIT "E" TO COMPLAINT

UNITED STATES OF AMERICA, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

The President of the United States to the Marshal of the Eastern District of Arkansas, Greeting:

You are hereby commanded to summon L. G. King, as assessor of Craighead County, C. R. Cordell, A. C. Martineau and Monroe Smith, as the State Tax Commission of the State of Arkansas, and

W. H. Fuller, as county judge of Craighead County, Arkansas, if they be found within your district, to appear before the Judge of our District Court of the United States in and for the Western Division of the Eastern District of Arkansas, at the United States court room in the city of Little Rock, Arkansas, within twenty days after service of this process, to answer a complaint filed against them in said court by United States, on relation of the Maccabees, and warn them that, upon their failure to answer, the complaint will be taken for confessed; and have you then and there this writ, with the manner of execution hereof indorsed hereon.

In testimony whereof, Hon. Jacob Trieber, Judge of the District Court of the United States, has caused the seal of said district court to be hereunto affixed, this 2d day of March, A. D. 1921, and in the one hundred and forty-fifth year of our independence.

[fol. 35] Attest:

Sid B. Redding, Clerk, by W. P. Field, Jr., D. C.

United States District Court, Eastern District of Arkansas, Western Division

No. 6193

U. S. ex Rel. The Maccabees

v.

L. G. King, as Assessor of Craighead County et al.

Summons

Issued March 2, 1921.
Returnable within twenty days after service.
Returned and filed Mar. 24, 1921.
Sid B. Redding, Clerk. Rose, Hemingway, Cantrell & Loughborough, Plaintiff's Attorney.

In obedience to the within writ, I have summoned the within named C. R. Cordell, A. C. Martineau and Monroe Smith, as the Tax Commission of Arkansas. W. H. Fuller, 3-5-31.

L. G. King at Jonesboro, 3-7-21, as Tax Assessor and County Judge of Craighead County, by delivering into his hands a true and correct copy of the same, at Little Rock, Ark., in the Eastern District of Arkansas, this 2nd day of March, A. D. 1921.

A. J. Walls, U. S. Marshall, by D. A. Caldwell, Deputy Marshall.

[fol. 36] EXHIBIT "F" TO COMPLAINT

UNITED STATES OF AMERICA,
Eastern District of Arkansas,
Western Division:

Be it remembered, that at a District Court of the United States of America in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 4th day of April, Anno Domini one thousand nine hundred and twenty-one, at the United States court room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge, presiding and holding said court, the following proceedings were had, to-wit: On April 7, 1921:

No. 6193

UNITED STATES, on Relation of THE MACCABEES

vs.

L. G. KING, AS ASSESSOR OF CRAIGHEAD COUNTY; C. R. CORDELL, A. C. Martineau, and Monroe Smith, as the State Tax Commission of the State of Arkansas, and W. H. Fuller, as County Judge of Craighead County.

Order

Comes the relator by Rose, Hemingway, Cantrell & Loughborough, its attorneys, and the defendants, though duly served with process, come not; and, the court being sufficiently advised in the premises, it is ordered, considered and adjudged that a mandamus issue, requiring the defendant to assess at its full value in money all property in Craighead County, and to continue said assessment at its full value in money until the judgment of the plaintiff herein for $77,680 and [fol. 37] costs shall have been paid in full; and it appearing that the property in said county has heretofore been assessed at not exceeding 50% of its assessed value, it is ordered that said mandamus require that the total assessment made hereunder shall be at least double the amount of the total assessment heretofore made. It is further ordered that service of a copy of this order be deemed a sufficient service of the mandamus.

[fol. 38] IN CHANCERY COURT OF CRAIGHEAD COUNTY

ANSWER OF FRISCO RAILWAY TO COMPLAINT IN CHANCERY—Filed Aug. 22, 1923

Omitting caption and signature of counsel, the answer of the Frisco Railway to the complaint was as follows:

Defendant, answering the complaint herein, denies each and every allegation therein contained not herein expressly admitted.

1st. Admits that it is a corporation organized under the laws of the State of Missouri.

2nd. Admits that it is the lessee of a line of railway in Craighead County, Arkansas, including the Bonnerville-Southwestern Railroad, and that it maintains and operates said roads.

3rd. Admits that the Maccabees filed a suit against Craighead County in the United States District Court as alleged, and that exhibit "A" is a copy of the complaint filed in said suit.

4th. Admits that Craighead County filed its answer to said suit and that exhibit "B" to the complaint herein is a copy of said answer.

5th. Admits that said United States District Court on February 17, 1921, rendered judgment in said cause, copy of which is marked exhibit "C" to the complaint herein.

6th. Admits that on March 2, 1921, the Maccabees applied to the said United States District Court for a writ of mandamus, copy of [fol. 39] the petition therefor is marked exhibit "D" to the complaint herein, and that said petition was against L. G. King as assessor, W. H. Fuller as county judge, and C. R. Codell, A. C. Martineau and Monroe Smith as the State Tax Commission of the State of Arkansas.

7th. As to whether the defendants last above named were duly or otherwise served with summons or other process to answer to said petition for writ of mandamus, this defendant is not informed and has not sufficient information to form a belief, and therefore denies that any of said defendants were in fact served with summons as required by law or at all, and defendant demands strict proof of the allegation of such service.

8th. Denies that judgment by default was rendered in said United States District Court, as alleged and at the time alleged, against any of the defendants mentioned in said petition, or otherwise, or at all. But defendant admits that the said United States District Court did on April 7, 1921, make an order, of which exhibit "F" is a full and complete copy. Defendant denies that any other or different order or judgment was ever rendered or entered upon said petition for writ of mandamus.

9th. Denies that the said order of which exhibit "F" is a copy was ever served upon the defendants named in said order, or petition therefor, as alleged, or at all, or at the time alleged, or in the manner [fol. 40] alleged, or otherwise or at all, and the defendant demands strict proof of such alleged service.

10th. Defendant denies that, in pursuance of said mandamus or order, or any mandamus or order of the United States District Court, the "tax assessor of Craighead County assessed for the taxing year 1921 all taxable property taxable by him at its full value for the

purpose of general county taxes instead of upon the usual basis of 50 per cent of said true value" as alleged. But the defendant alleges the facts to be that the various "township boards of assessment and valuation" of Craighead County, together with the assessor of said county, prior to April 7, 1921, the date of the order pleaded in the 8th paragraph of the complaint, had duly assessed and valued all property in Craighead County and had duly certified the result thereof to the State Tax Commission, as required by Act 147, passed and approved March 1, 1919, and said valuation and assessment was duly approved by said State Tax Commission as the basis of taxation in Craighead County for the year 1921.

Defendant, further answering paragraph 10 of the complaint, admits that the State Tax Commission fixed the value of all property, including the property of this defendant and property under its control, at 50 per centum of the true value. And defendant alleges that this was done by said Tax Commission for the purpose [fol. 41] of making the assessments of all property in all of the counties of Arkansas equal and uniform throughout the State, as required by the Constitution of the State.

But defendant denies said State Tax Commission of Arkansas, in pursuance of the order for a mandamus, or at all, directed the tax assessor of Craighead County, in extending said assessment upon the taxbooks of the county, to extend the same at full valuation. But defendant alleges that the valuation and assessment of all property in Craighead County had been completed by the various township boards of assessments and valuation together with the assessor, and this had been approved and certified to the county clerk of Craighead County before any order was ever issued by the United States District Court, as alleged, and thereafter and without authority of law or in obedience to the order of the United States District Court pleaded, the assessor on September 8, 1921, wrote a letter to the secretary of the State Tax Commission, a copy of which is attached and marked exhibit "A" to this answer and made a part hereof, in which the assessor stated:

Jonesboro, Arkansas, Sept. 8, 1921.

State Tax Commission, Little Rock, Arkansas, Mr. Brown, Sec.

DEAR SIR: In compliance with an agreement with the attorneys for the Maccabees, we assessed all property in Craighead County at 100% for county tax only. We did this by using an extra column in our assessment books.

[fol. 42] Shall I double the assessment that you sent me?

Awaiting an early reply, I am

Very respectfully, (Signed) L. J. King.

Box 250, Jonesboro, Ark.

In reply thereto the secretary of the State Tax Commission replied by letter, copy of which is hereto attached and marked exhibit "B" and made a part of this answer, in which letter the secretary of the State Tax Commission stated:

"September 10, 1921.

"Mr. L. J. King, Assessor Craighead County, Jonesbor-, Arkansas.

DEAR SIR: Referring to yours of the 8th inst. in which you state that all property in Craighead County had been assessed at one hundred per cent for county tax only, and ask if the Tax Commission's assessments should be doubled for county purposes, I have to advise that, since all property is required to bear the burden of taxation equally, I should think that the Tax Commission's assessments should be doubled for county purposes. However, since a one hundred per cent assessment for county purposes is the result of an agreement, and is not required by our tax laws, I rather think that, should any of the companies or corporations assessed by the Tax Commission object to this assessment for county purposes, it would not be sustained by the Courts.

[fol. 43] Yours very truly, Arkansas Tax Commission, (Signed) by E. W. Brown, Secretary. SWB-MS."

Defendant alleges that, under and pursuant to these two letters, the taxbooks of Craighead County were changed by some one to this defendant unknown, and without authority, by adding a nextra column to the books as already made out, in which extra column the value of this defendant's property as theretofore fixed by the various township boards of assessment and valuation, together with the assessor, and approved by and certified to the county clerk of Craighead County by the State Tax Commission, was doubled for "county general purposes." That said act was void and unauthorized by the order pleaded, or by law.

Defendant denies that said act of so doubling the valuation of its property for taxation was authorized by the order of the United States District Court, or that said court had any jurisdiction so to do, or that any State of county official was authorized by said order or the law so to do, but defendant alleges that the doubling of the value placed on its property, which was equal and uniform with the assessments of like property throughout the State, was in violation of section 5 of article 16 of the Constitution, and was and is void.

11th. Defendant admits that the valuations set out in the first column of the tabulation of the 11th paragraph of the plaintiff's [fol. 44] complaint were the valuations of the defendant's property fixed by the State Tax Commission of the State of Arkansas, and that the second column shows the valuation contained in the extra column added to the tax books as indicated in the letter to the State Tax Commission secretary and his reply thereto, and for the reasons stated in thos- letters, and not otherwise.

12th. Admits that the rate of taxes levied by the quorum court of Craighead County for 1921 for county general taxes was 5 mills on the dollar.

But defendant denies that the general county taxes due from it to Craighead County is or was $9,021.87, but alleges that the true and

legal tax, based on the legal assessment and valuation fixed by the assessing officers, State and county, was and is $4,510.93, which said last named sum this defendant tendered to the collector of Craighead County before said tax became delinquent or subject to a penalty. That the collector, acting upon legal advice, refused the tender so made solely because the amount was less than $9,021.96 which appeared on the t-x books.

13th. Defendant denies that it is indebted to the State for the use of Craighead County in any sum in excess of $4,510.93, or that it is liable for any penalty or interest thereon, because it has always been ready and willing to pay said sum of $4,510.93, which it now offers to pay into court.

[fol. 45] 14th. Defendant, answering the 14th paragraph of the complaint, denies each and every allegation therein contained, and specifically denies that its main line property for taxation in Craighead County was valued at $1,567,710 or any sum in excess of $783,-855. And alleges that the valuation of $783,855 was and is the valuation determined and fixed by the county assessors and the State Tax Commission for the year 1922 and certified by said Commission to the county clerk of Craighead County. Defendant says that said valuation so fixed by the State Tax Commission and county officials aforesaid was illegally doubled by some one unknown to this defendant, by simply adding an extra column to the taxbooks, then already made out, and by extending the county general tax against this doubled valuation, in violation of section 5, article 16 of the State Constitution.

Defendant says the valuation of its property on the Bonnerville-Southwestern Railroad was fixed at $65,587 by the county assessors and the Tax Commission, and doubled on the taxbooks in the same manner, in violation of section 5, article 16 of the Constitution. Admits defendant tendered to the collector the sum of $4,247.22 in full of the general county tax, and defendant alleges that this was all that was legally due.

15th. Defendant admits that the rate fixed for general county tax by the quorum court was and is 5 mills on the dollar for the year [fol. 46] 1922, but denies such rate was legally extended against defendant's property, as alleged, or at all, but alleges that the valuation legally fixed on defendant's property in said county was illegally doubled as aforesaid.

Defendant admits that it paid all taxes due from it in Craighead County for 1922 except the general county tax, but alleges that it tendered to the collector 5 mills on the dollar on the value of its property fixed by the State Tax Commission, county assessor and township boards, but refused to pay on the double valuation shown on the taxbooks and which double valuation was made in violation of section 5, article 16 of the Constitution.

Defendant denies that the double valuation as shown on the tax books was in obedience to any order of the United States District Court as alleged, or at all, or that the said United States District

Court had any jurisdiction to order the valuation of defendant's property to be doubled as alleged, or at all.

16th. Defendant, for demurrer to the 16th paragraph of the complaint, says said paragraph does not state facts which brings this suit within the statute pleaded, and fails to state facts to entitle the plaintiff to any relief under the statute pleaded. And because the relief prayed in said paragraph cannot be granted without violating section 5, Article 16, of the Constitution of Arkansas.

17th. Defendant, for demurrer to the 17th paragraph, says that [fol. 47] said paragraph does not allege any facts to authorize the legal conclusion pleaded therein.

Defendant, answering the 17th paragraph, denies that the order of the United States District Court, of which exhibit "F" is a copy, is res adjudicata, as alleged, or binding on this defendant, for any reason alleged, or at all.

Defendant, further answering says that said order violates section 5, article 16 of the Constitution of Arkansas, and said United States District Court was without jurisdiction in that behalf, for that for the years 1921 and 1922 all property, including railroad company property in the 75 counties of the State of Arkansas, was assessed for all purposes on a basis not to exceed 50 per cent of its true value, and that said basis was approved and adopted by the State Tax Commission for all counties in Arkansas for the years 1921 and 1922 and prior years, and that said Commission never did fix any different valuation for Craighead County, and any attempt to do so by it, in obedience to the order pleaded in plaintiff's complaint, or without the same, would have been in violation of section 5, article 16, of the Constitution of this State.

Defendant denies that the plaintiff is entitled to the relief prayed in its complaint, or any relief.

Defendant, having fully answered, asks judgment for its costs herein.

[fol. 48] In Chancery Court of Craighead County

Complaint Against Missouri Pacific Railroad Company

On July 19, 1923, plaintiff filed a complaint against the Missouri Pacific Railroad Company, which contained the same allegations in all respects as the complaint against the St. Louis-San Francisco Railroad Company, except as to:

(1). The name and identity of the defendant.

(2). The property upon which the assessment was made and the amounts of taxes for the years sued for.

The Missouri Pacific Railroad Company was sued for $4,414.80 taxes for the year 1921, and for $4,362.40 taxes for the year 1922. The same relief was asked for and the same exhibits were attached

as in the case of the complaint against the St. Louis-San Francisco Railroad Company. As the complaint and exhibits are lengthy, it is believed that no useful purpose would be served by setting them out at length, in view of their being identical with the Frisco complaint.

In Chancery Court of Craighead County

Answer of Missouri Pacific Railroad Company

As the answer of the Missouri Pacific Railroad Company is not the same as that filed by the Frisco, it will be abstracted. This answer was filed on August 10, 1923, and is as follows (omitting caption and signatures of counsel):

[fol. 49] Comes the defendant, Missouri Pacific Railroad Company, and for its answer to the complaint admits its corporate existence, domicile and ownership and operation of line of railroad as alleged in the complaint, and says it has complied with all the laws of the State of Arkansas in respect to its authorization to own and operate such railroad, as a common carrier of freight and passengers, both interstate and intrastate.

It admits that on February 17, 1921, in the United States District Court for the Eastern District of Arkansas, judgment was rendered in favor of the Maccabees against Craighead County, in the sum of $77,680.

It admits that on March 2, 1921, the Maccabees, in the name of the United States, filed petition for mandamus against the then assessor of Craighead County, county judge of Craighead County, and members of the State Tax Commission of the State of Arkansas, to require said defendants to assess the taxable property in Craighead County on a basis of its full actual value, and admits that there was service of summons upon hearing upon the petition for mandamus, and that on April 7, 1921, an order was granted, of which exhibit "F" to the complaint is a correct copy.

Defendant denies that such order was served upon C. E. Cordell, A. C. Martineau or Monroe Smith, then members of the State Tax Commission, or any of them, and defendant denies that the State [fol. 50] Tax Commission of the State of Arkansas, in compliance with the writ of mandamus or otherwise, assessed the property of defendant in Craighead county at a sum double the theretofore existing rate of assessment upon the same, and denies that the said Tax Commission directed the tax assessor of Craighead county, in extending assessments upon the taxbooks of the county, to extend same against property of this defendant at its full value, or at double the amount theretofore assessed. And defendant alleges that the Tax Commission of the State of Arkansas did not, by certificate of its chairman and secretary, or in any other way, on or before the 1st day of September, 1921, or at any other time, certify to or advise the assessor of Craighead County to extend upon his records an assessment purporting to represent the full actual value of defendant's

property, or double the amount of valuation theretofore extended against same.

Defendant admits that the assessor of Craighead County extended assessment against property of this defendant in said county in two different amounts, to-wit: $441,480 and $882,960, and admits that the quorum court of Craighead County levied a tax of five (5) mills for county general purposes, but denies that the quorum court undertook to find or set out any assessed values. And defendant alleges that the valuation on its property certified by the State Tax Commission to the county assessor of Craighead County was not $882,960, but was $441,480, and that its tax should have been computed upon the same amount of $441,480, which would make its tax [fol. 51] for county general purposes $2,207.40, and not $4,414.80, as claimed in the complaint. And defendant shows to the court that prior to April 10, 1922, the last date when taxes might be paid without penalty for the year 1921, it tendered to the collector of Craighead County the said sum of $2,207.40, which he refused to accept. And the defendant still tenders to pay such last mentioned sum as its county general tax for the year 1921.

Defendant admits that it paid all taxes claimed by the collector of Craighead County to be due said county by the defendant for the year 1921, except for the difference on the county general tax above set out, and denies that plaintiff is entitled to recover any penalty or cost on such amount.

Defendant admits that for the year 1922 there was extended against its property in Craighead County an assessment of $436,240 and also an assessment of $872,480, but says the amount of $436,240 was the amount fixed by the State Tax Commission, and not the amount of $872,480, and that the proper assessment was the former and not the latter amount.

Defendant admits that the quorum court of Craighead County levied a tax of five (5) mills on the dollar for county general purposes upon all property in the county, but denies that such five mill tax should have been or should be computed except upon the amount of $436.240 certified by the Arkansas Tax Commission, making the [fol. 52] tax due by it for county general purposes $2,181.20 instead of $4,362.40 as set out in the complaint. Defendant paid all taxes charged against it for the said year, except the said amount due for county general purposes, and such amount was tendered to the collector of Craighead County prior to April 10, 1923, but the same was refused by him. And defendant still tenders the said amount of $2,181.20 as its county tax for the year 1922. Defendant denies that it is liable for any penalty or interest as sued for in the complaint.

Defendant demurs to paragraph number 15 of the complaint, in which paragraph it is stated, in substance, that if the court shall find that the Arkansas Tax Commission or the Railroad Commission did not legally or properly make the assessment sued upon by plaintiff, then plaintiff desires to proceed under the provisions of sections

10204 to 10214 of Crawford & Moses Digest of the statutes. And defendant states that its reason for demurring to said paragraph is that none of the grounds set out in the statute therein referred to as authorizing the Attorney General to bring such a suit or the courts to award such a decree exist in this case. And defendant denies that all other taxable property in Craighead County for the year 1921 and 1922, either in compliance with the terms of the mandamus or otherwise, paid their county general tax on the basis of full value assessment as fixed in the mandamus.

Defendant denies that the amount of its county tax for the year [fol. 53] 1921 or 1922 is settled as res adjudicata by the judgment in the Federal court or the mandamus issued thereupon.

II

Defendant says that it is the owner and engaged in the operation of a line of railway into and through the State of Arkansas, with various branch lines, and that its lines run through many counties in said State.

That for the years 1921 and 1922, and many years prior thereto, the Arkansas Tax Commission or the Railroad Commission have, by rule adopted and promulgated, fixed an assessment upon a basis assumed by them to be 50% of the full value of the property, and such rule has been adopted for all the counties in the State. And proceeding under its legal power to assess railroad property, the said Commission has undertaken to follow the same rule.

The mandamus "requiring the defendants to assess at its full value in money all property in Craighead County, and to continue said assessment at its full value in money until the judgment of the plaintiff herein for $77,680 and costs shall have been paid in full," is void because in contravention to section 5, article 16 of the Constitution of Arkansas, which provides that "all property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State."

[fol. 54] Still denying that the Arkansas Tax Commission or the Railroad Commission certified to the assessor of Craighead County a valuation against property of this defendant of $882,960 for the year 1921 or $872,480 for the year 1922, defendant alleges that if such Commission did in fact certify such valuations to the Tax Assessor of Craighead County, its action in so doing was void because in violation of the uniformity clause of the Constitution of Arkansas, hereinabove recited.

And defendant alleges that the fact that the assessor of Craighead County undertook to extend two separate and distinct valuations against property in the said county does not have the effect of in any way rendering the said mandamus constitutional, since the question of whether or not it is constitutional must be tested by its own language, and not by any unauthorized deviation therefrom on the part of the said tax assessor or the Arkansas Tax Commission.

Defendant shows to the court that the attempted assessment in Craighead County of its property in an amount double, or in excess of the amount for which property of the same value is assessed in other counties, constitute an effort to illegally exact the amount of tax upon such excess valuation, and as against the enforcement of such illegal exaction defendant has a constitutional right to protection.

Wherefore, the defendant prays that the complaint be dismissed, and for its costs and all other proper relief.

[fol. 55] IN CHANCERY COURT OF CRAIGHEAD COUNTY

AGREED STIPULATION OF FACTS

Subject to the objections of plaintiffs to admissibility on the ground that same is incompetent, irrelevant and immaterial and constitutes a collateral attack on the Federal mandamus judgment relied on by plaintiffs, it is stipulated and agreed between the undersigned solicitors, representing the parties to the above suits, that the valuation of all property for taxation, including railroad property, in all counties other than Craighead and such other counties in which mandamus proceedings for full value assessment were had, was fixed by the State Tax Commission and the county assessors and boards of assessments and valuation on a basis of fifty per cent (50%) of its true value in money, for the same years for which the taxes sued for were assessed.

It is also stipulated that the following constitutes true and correct copies of letters between the tax assessor of Craighead County, [fol. 56] Arkansas, and the Arkansas Tax Commission, copies attached marked exhibits 1 and 2 hereto and may be read in evidence.

It is admitted that the order, exhibit "F," to the complaint, was served on all parties thereto some time in April, 1921, and that summons was served on all defendants in mandamus petition, as shown by exhibit "E" to the complaint, which is true copy of summons and return thereon.

It is stipulated that exhibits 3 and 4 and 5, being certificates from State Tax Commission, will be admitted as evidence.

EXHIBIT 1

"Jonesboro, Ark., Sept. 8, 1921.

"State Tax Commission, Little Rock, Arkansas, Mr. Brown, Sec.

DEAR SIR: In compliance with an agreement with the attorneys for the Maccabees, we assessed all property in Craighead at 100% for county tax only. We did this by using an extra colum in our assessment books.

Shall I double the assessment that you sent me, likewise? Awaiting an early reply, I am

Very respectfully, (Signed) J. L. King.

Box 250, Jonesboro, Ark.

[fol. 57] EXHIBIT 2

September 10, 1921.

Mr. L. J. King, Assessor Craighead County, Jonesboro, Arkansas.

DEAR SIR: Referring to yours of the 8th inst. in which you state that all property in Craighead County had been assessed as one hundred per cent for county tax only, and ask if the Tax Commission's assessments should be doubled for county purposes, I have to advise that, since all property is required to bear the burden of taxation equally, I should think that the Tax Commission's assessments should be doubled for county purposes. However, since a one hundred per cent assessment for county purposes is the result of an agreement and is not required by our tax laws, I rather think that, should any of the companies or corporations assessed by the Tax Commission object to this assessment for county purposes, it would not be sustained by the courts.

Yours very truly, Arkansas Tax Commission, (Signed) by E. W. Brown, Secretary. EWB-MS.

[fol. 58] EXHIBIT 3

"Little Rock, Arkansas, April 1, 1921.

The following order was made by the Arkansas Tax Commission, and the secretary instructed to mail certified copy of same to each county clerk and county assessor:

"By virtue of the authority vested in the Arkansas Tax Commission by Act 263 of the Acts of the General Assembly of the State of Arkansas, approved March 17, 1917, the Arkansas Tax Commission, duly assembled in regular session and acting as such Commission, do hereby adjudge, fix and certify to each county clerk and county assessor in their respective counties, 50% of the market value of all property in this State as the percentum of market value we have, or will use in valuing for taxation for the year 1921, the property we are required to value.

Arkansas Tax Commission. (Sgd.) Monroe Smith, Chairman.

Attest: (Sgd.) E. W. Brown, Secretary.

I, E. W. Brown, secretary tax division of the Arkansas Railroad Commission, do hereby certify that the above and foregoing is a

true and correct copy of an order made by the Arkansas Tax Commission under date April 1, 1921, as appears of record in minute book of the Commission, page 174.

[fol. 59] In witness whereof I have hereunto set my hand and seal of the tax division of the Arkansas Railroad Commission, this the 17th day of August, 1923.

E. W. Brown, Secy. Tax Division of Arkansas Railroad Commission. (Seal.)

[fol. 60] EXHIBIT 4

Office of Arkansas Tax Commission

Little Rock, Arkansas, March 28, 1922.

At a meeting of the Commission on this the 28th day of March, 1922, the following order was made and the secretary instructed to forward copy of same to each county clerk and county assessor of the State:

"By virtue of the authority vested in the Arkansas Tax Commission by Act No. 263 of the Acts of the General Assembly of the State of Arkansas, approved March 17, 1917, the Arkansas Tax Commission, duly assembled in regular session and acting as such Commission, do hereby adjudge, fix and certify to each county clerk and county assessor in their respective counties, fifty (50%) per cent of the market value of all property in this State, as the per centum of market value we have, or will use in valuing for taxation for the year 1922, the property we are required to value."

Arkansas Tax Commission. (Sgd.) A. C. Martineau, F. E. Brown, Commissioners.

Attest: (Sgd.) E. W. Brown, Secretary."

I, E. W. Brown, secretary tax division of the Arkansas Railroad Commission, do hereby certify that the above and foregoing is a true [fol. 61] and correct copy of an order made by the Arkansas Tax Commission under date March 28, 1922, as appears of record on page 219 of the minute book of the minute book of the Commission.

In witness whereof I have hereunto set my hand and seal of the tax division of the Arkansas Railroad Commission, this the 17th day of August, 1923.

E .W. Brown, Secy. Tax Division of Arkansas Railroad Commission. (Seal.)

[fol. 62] EXHIBIT 5

Resolution of Arkansas Tax Commission Adopted September 18, 1922

Whereas, the Maccabees have obtained a writ of mandamus ordering and directing the members of the Arkansas Tax Commission

to assess the property of all public utilities and other taxable property in Craighead County, Arkansas, at its full market value in money, instead of the fractional basis of assessment of fifty percentum which has been certified out by the Arkansas Tax Commission as the basis upon which the property of the State for the year 1922, the Maccabees being a creditor of Craighead County, Arkansas; and

Whereas, the certificates of the assessment of such property in such county so assessed by the Arkansas Tax Commission have, in compliance with the regular basis of assessment, been made upon fifty percentum of true value;

Now, therefore, in compliance with the terms of said writ of mandamus, be it hereby resolved by the Arkansas Tax Commission:

1. That the assessor of Craighead County, Arkansas, be and he is hereby commanded and directed, in extending said assessments upon the taxbooks of Craighead County, Arkansas, to double the amount of the assessment as shown by the certificates of this Commission, for the purpose of extending thereon the general county tax rate for [fol. 63] Craighead County, Arkansas, and that he show in a separate column said fifty percentum assessment for the purpose of extending State, three mill county road tax, school district tax and municipal corporation tax thereon.

2. That this resolution shall extend to all property in said county of Craighead assessed by the State Tax Commission, and shall be considered as amending and correcting each one of said certificates to the same extent and with the same effect as if this resolution were set out in full upon each one of the said certificates of assessment so made by the said State Tax Commission.

3. Said assessor of Craighead County, Arkansas, is also ordered, directed and commanded with respect to the assessment of all property in Craighead County, Arkansas, which is assessed by the township boards of assessment and valuation of said county, or by the assessor himself, to show the same in his assessment books in two separate columns, one column to be upon a one hundred per centum basis, or at full value, and the other on the ordinary fifty per centum basis of true value; and upon the one hundred per centum assessment shall be extended the county general tax, and upon the fifty per centum assessment shall be extended State and all other taxes imposed by the various taxing units of said county.

Arkansas Tax Commission. (Signed) E. F. Friedell, Chairman.

[fol. 64] I, E. W. Brown, secretary of the Arkansas tax division of the Arkansas Railroad Commission, do hereby certify that the above and foregoing is a true and correct copy of resolution adopted by the Arkansas Tax Commission on the 18th day of September, 1922, as shown by records of this office.

In witness whereof I have hereunto set my hand and seal of the tax division of the Arkansas Railroad Commission, this the 17th day of August, 1923.

E. W. Brown, Sec. Tx. Div. Arkansas Railroad Commission. (Seal.)

[fol. 65] IN CHANCERY COURT OF CRAIGHEAD COUNTY

NOTATION AS TO CERTIFIED COPY OF ORDER OF MANDAMUS OF FEDERAL DISTRICT COURT

The certified copy of the order of mandamus of the Federal District Court here set out in transcript will not be recopied in this abstract for the reason that it already appears as exhibit to the complaint abstracted herein.

IN CHANCERY COURT OF CRAIGHEAD COUNTY

AFFIDAVIT OF L. J. KING

L. J. King testified as follows: I am county assessor of Craighead County, Arkansas, and have been since 1921, am now holding my second term, having first come into office on January 1, 1921. I was one of the defendants in the mandamus proceeding brought by the Maccabees. The writ of mandamus from the Federal District Court was served on me a few days after April 7, 1921. The assessing period does not start until the first Monday in May. I advertised the first of April and began making my rounds the first Monday in May. The assessment made in taxing year 1921 did not start until after this mandamus order had been served on me. Later a question arose as to whether the Federal mandamus order meant that the assessment should be made on 100% basis for all taxes or for county general taxes alone. It was agreed with the Maccabees, [fol. 66] but the agreement was not carried out, because the people would not pay their taxes in cash. I wrote Judge Trieber, Judge of the Federal District Court that rendered the order of mandamus. I wrote this letter to Judge Trieber asking for an interpretation of the order so that I might comply with the order and not be in contempt of court. I did this after receiving letter from Judge Rose, threatening me with contempt of court. As there was a difference in the opinion of local attorneys, I wrote Judge Trieber and asked him the meaning of the order. The illustration sent with the letter has been lost. The illustration was two columns, I headed one "50%" and the other "100%" for county purposes only, fifty per cent for all taxes and 100% for county general only. The letter to Judge Trieber and his reply is offered in evidence as exhibit "H" and was in words and figures as follows:

"Jonesboro, Ark., Sept. 15, 1922.

"Hon. Judge Trieber, Little Rock, Ark.

DEAR SIR: With reference to the mandamus issued by your court ordering me, as assessor of Craighead County, to assess all property in said County at 100% valuation for the purpose of satisfying a judgment against the county in favor of the Maccabees.

If I assess at 100% valuation for county purposes and 50% valuation for other taxes, will I have complied with your order?

[fol. 67] That is, if I head one column in my assessment book as per illustration on next page will I be complying with the order of the court?

The advice and counsel that I have received concerning this matter is confusing, and if you will be so kind as to give me the information requested, I will certainly appreciate it. I am desirous of complying with the court's order, and do not wish to be misled by the opinion of others.

Thanking you in advance for your kindness, I am

Very respectfully, L. J. King, Assessor."

"The mandamus of this court refers only to an assessment for general county purposes. It does not apply to any other assessments. Whether you can make a distinction in the assessments is not a matter for this court to pass on under the mandamus. I gave the same information to Judge Gregg.

Trieber, Judge."

The letter from Mr. Rose was offered in evidence as exhibit "B," and was in words and figures as follows:

[fol. 68] "Little Rock, Ark., Sept. 16, 1922.

"Mr. L. G. King, Assessor, Jonesboro, Arkansas.

DEAR SIR: We have received a letter from Mr. Horace Sloan, in which he says that you will double the assessment only for county general taxes. There is no law for anything of that kind, and if you undertake to do that, the tax sales would be void, and we should have no means of enforcing payment. You are therefore advised that, if you fail to double the taxes for all purposes, we shall have you cited for contempt.

This is not the year for assessing real estate; but you paid no attention to the mandamus, which was served upon you last fall, and you must now do what was then required or we shall institute contempt proceedings. You cannot defeat the jurisdiction of the Federal Court in the matter by failing to obey its mandamus.

Rose, Hemingway, Cantrell & Loughborough. G. B. Rose.
GBR-JG.

Register.

In making the assessments for the taxing year 1921 I assessed all the property in the county on a basis of fifty per cent for all taxes except county general tax and on a basis of one hundred per cent for county general taxes. I understood that this scrip was drawn on county general fund and due out of county general tax. I did the same thing for the taxing year 1922, and assessments on public utilities when sent to me by the Arkansas Tax Commission were [fol. 69] extended in the same manner; while the Arkansas State Tax Commission made out the certificates at 50% they ordered me afterwards to assess the public utilities at 100% for county general

tax. They ordered me to do that by letter in 1921 and by resolution in 1922.

IN CHANCERY COURT OF CRAIGHEAD COUNTY

TESTIMONY OF HOMER HOWELL

Homer Howell testified as follows: I am collector of revenue of Craighead County. I went into office on January 1, 1921, and have held the office since that time. As collector I collected the 1921 taxes in the year 1922 and the 1922 taxes in 1923. During both of these tax collecting periods I collected taxes on the basis of full value assessment for county general purposes. Except for the usual number of delinquencies, every one paid except the Missouri Pacific Railroad Company and the Frisco. The Cotton Belt did not pay in 1921, but they did pay later for 1921 and 1922. By Cotton Belt I mean the St. Louis Southwestern Railroad Company. The Jonesboro, Lake City & Eastern Railroad Company also paid full value assessment for county general purposes at the regular time each year, and so did the telephone company.

Cross-examination.

By Mr. Orr:

The Frisco tendered me all taxes on 50% basis and I accepted all taxes except the county part, and the reason why I refused the 50% [fol. 70] on county part was because I didn't think I could divide it.

Cross-examination.

By Mr. Frierson:

The same thing is true of the Missouri Pacific Railroad Company.

Redirect examination:

Neither the Missouri Pacific Railroad Company nor the St. Louis-San Francisco have actually paid any part of county tax for the year 1921 or 1922, but they tendered me what they claimed to be the regular one-half, and I refused to accept that on the ground that they must tender all or none, or I would be without authority to accept it, and the full amount remained unpaid.

Recross-examination.

By Mr. Frierson:

There was no difference in the figures or calculations between me and the railroad companies except that they were unwilling to pay on 100% valuation for county purposes. They wanted to pay county

taxes on 50% basis. These tenders were made on or before April 10, 1922 and 1923.

Redirect examination:

It was here stipulated that the amounts of taxes alleged to be due under full value assessment for county general purposes to Craighead County appear on taxbooks of Craighead County as sued for in the complaints.

[fol. 71] Here appears in the transcript a copy of the tax books for the year 1921, setting out in full assessments of the defendant railroads. As there is no contention over the amounts of assessments, but only whether or not the assessment of 100% valuation can be enforced this abstract is not incumbered with these figures, as they are very voluminous and would serve no purpose in determining the issues on this appeal.

There was no further evidence offered in the cause by either party.

[fol. 72] IN CHANCERY COURT OF CRAIGHEAD COUNTY

STATE

v.

FRISCO RY. et al.

OPINION

Horace Sloan, A. P. Patton, for Plaintiff.
Gordon Frierson, W. J. Orr, for Defendants.
Gautney & Dudley, E. L. Westbrooke, of Counsel for Defendants.

GENTLEMEN: The following propositions have been brought into this controversy, but the conclusion reached does not depend on the affirmance of all of them:

1. The order of mandamus in the Maccabees case is res judicata, unless void.

2. The validity of the mandamus must be tested in this court by the laws and Constitution of this State, as construed by the State Supreme Court.

3. The order of mandamus was not obeyed.

4. This court should not enforce an assessment void under the plain terms of the Constitution.

5. A Federal court will determine for itself what is the law of a State affecting a contract made prior to a decision of the State court, but such determination will not be binding upon the State court in another suit, between different parties, or where there is an absence of the principles of res adjudicat-.

6. This case involves no attempt to interfere with the exercise of the jurisdiction of another court.

[fol. 73] 7. The full faith and credit clause, or comity, is not here involved except as to the order of mandamus.

8. The Jimmerson and Cargill cases are not res judicata, but are cited authorities.

9. No Federal question is involved.

10. The U. S. Constitution prohibits the passage of any law impairing the obligations of a contract. A judicial decision cannot impair except when it does that which amounts to legislation; for example, a court renders a decision, which of course has the effect of law, on the faith of which a contract is made, after which the court overrules its prior decision.

11. The proposition that Meeks v. State, 127 Ark. 349, is the first pronouncement of our court as to the duties of the assessing officers, here involved, is debatable.

12. A void judgment is no judgment and cannot be a basis for any asserted right.

Not all of the foregoing propositions will be discussed. Some are evident, and cannot be resisted by any sound contention.

Order of Mandamus

What is a void judgment? What is the distinction between a void and an erroneous judgment? A void judgment is also erroneous. To render a valid judgment, as distinguished from a void judgment, jurisdiction of the subject-matter and the person must not only exist, but the court must have the power to render the par-[fol. 74] ticular judgment in the particular case. This rule was announced in the case of Munday v. Vail, 34 N. J. L. 418, which is a leading case upon this subject, and a part of the opinion in this case announcing this rule was adopted by Black in his work on Judgments, Vol. —, page —. The rule announced therein has been approved repeatedly by the Supreme Court of the United States, and by many, if not all, the courts. It is earnestly contended that the court in the Maccabees case had jurisdiction of both the person and subject-matter and the power to make an order of mandamus in that case, and that, if the court mistook the law prescribing the duties of the officers, its order was erroneous and not void. The premises is conceded, but the conclusion cannot be accepted. A court in a proper case can compel an officer to perform his ministerial (not discretionary) duties. These duties as fixed by law mark the outside limits of the powers of the court in this regard. A judgment of a court directing an officer to do that which is not his duty, is beyond the power of the court, it has no power to render the particular judgment.

A justice of the peace, having jurisdiction of the person and subject-matter in misdemeanor case, cannot impose the death penalty, because it has no such power in any case.

A court of equity, having jurisdiction of a husband and wife as defendants in a foreclosure proceeding, cannot decree a divorce between the husband and wife in that case; it lacks the power to render the [fol. 75] particular judgment, yet it has jurisdiction of the person and subject-matter. In a proper case it could render such a decree, the court having general jurisdiction of the subject-matter of divorce.

Differently stated, a judgment is erroneous when a court commits error in the exercise of its power, while a void judgment is where the court commits errors as to its powers. A mistake in the first is not fatal to the judgment, while it is in the latter; one can be cured, the other cannot; one may become final and binding, the other cannot.

While a court is acting within its power as delegated to it by the laws and Constitution, but mistakes either the law or the facts, its judgment based thereon is erroneous only, and must be corrected by appeal or writ of error; or it is final and conclusive as if no error had been committed. Not so where a court oversteps its power; the court's mistake in such a case is not in the exercise of its authority but in assuming authority which it has not.

A court having jurisdiction of the person and subject-matter may order and compel an officer to perform a ministerial duty. Such duties are fixed by law, and if the order directs a duty not fixed by law, to that extent the order is void, being in excess of the power of the court. This must be true for the reason that, if the court cannot create duties not made by law, but which would be in violation of law, it would follow that the court has the power to suspend or [fol. 76] change the law. The government is divided in three separate and independent departments. The judiciary is one of these, and has no legislative functions, and therefore has no power to change the law. Any attempt by one department to exercise functions and power which belong to another department is absolutely void. Kilbourne v. Thompson, 26 L. Ed. U. S. 377; Town of Hoxie v. Gibson, L. Reporter October 23, 1922; U. S. v. New River Colliers Co. U. S. May 21, 1923, Adv. Sheet June 15, 1923; Monongahela Nv. Co. v. U. S. 37 L. Ed. 463; Ex parte Rowland, 104 U. S. 604.

The Assessment

The mandamus required the officers to assess the property of Craighead County at its full value. It may be here observed that such an assessment would be void under the Constitution unless made in all the counties of the State. It may be further observed that the State Tax Commission has the discretion to fix the percentage for any one county, but the tax officials did not comply with the court's order; they made a 100% valuation for Craighead County for county purposes only, while they made another assessment of Craighead County property for all other purposes at a valuation of 50%. The

assessment so made shows two valuations of the same property. This cannot be under the Constitution of this State. The language of the Constitution forbids construction upon this point. The Tax Commission, prior to the order in question, directed the several county taxing officials to make a 50% assessment and it became the duty [fol. 77] of said officials to make just that assessment. To require them to make any other assessment was contrary to law. That the Tax Commission had authority to fix the percentage was decided by our courts before 1916. The old statutory requirement that property be assessed at 100%, or full valuation, has long been abrogated by subsequent legislation. Measured by the laws and Constitution of this State, as construed by our Supreme Court, the assessment in question must be held to be void, and if the said assessment is in obedience to the order of the court, the order of the court must also be held void for the reason that it prescribed duties contrary to the law and Constitution of this State, a power which the court did not have. Hays v. Mo. Pac. Ry. Co. 14 Law Rep. 201.

It may be observed that if this case were pending in the Court of Appeals, the opinion in the Cargill case informs us what would be the holding of that court as to the order in question. Conceding the right of that court to decide for itself what is the State law in a case before it, it is certainly within the power of the State court to do likewise. It certainly is the duty of this court to follow what the Supreme Court of the State has said is the law. The independence of courts to act in cases before them is not confined to the Federal courts, but is equally exercised by all other courts.

The full faith and credit clause of the Constitution of the United [fol. 78] States has application only where a judgment of the court has settled certain issues between certain parties. Such a judgment must be given full faith and credit when those issues are subsequently involved in a case between the same parties before another court. We have no such case here, except as to the order of mandamus. The full faith and credit clause applies to valid and not to void judgments.

There is no Federal question here, and no Federal right is claimed, unless it be that the contract of the Maccabees has been impaired. There is no ground for this contention, as the impairment clause of the Constitution forbids the subsequent passage of a law which impairs its obligations. It is not claimed that any such law has been passed. The Supreme Court has repeatedly decided that the obligations of a contract are never impaired by judicial decision, except where the same has resulted in making law. One example will suffice: A court renders a decision, which of course has the effect of law, on the faith of which a contract is made, after which the court overrules the prior decision. This would be changing the law as previously announced by the court, and if such a subsequent decision impaired the obligations of a contract, this would be a Federal question, and the courts would give effect to the contract as though the subsequent decision had never been rendered.

In the foregoing it has been conceded that the Federal court had a [fol. 79] right to determine for itself what the laws of the State are,

and that the Meeks case was the first pronouncement of our court defining the duties of assessing officers. It is stated that the Meeks case was decided after the Maccabees had bought the county warrants, and that this fact gives the Federal court the right to decide for itself as to the law defining the duties of taxing officials.

It is a well settled rule of the United States Supreme Court that the decisions of the Supreme Court of a State as to its statutory law and Constitution is final and conclusive upon all other courts, except where rights have arisen or contracts have been made before the law in question has been construed by the State Supreme Court. It occurs to me that the questions decided in the Meeks case had in substance been decided in several cases long before the Maccabees acquired the county warrants in question. See the cases referred to in the Meeks case. The decision in the Meeks case was a necessary conclusion from prior decisions of the court. In other words, if the Meeks case had held, as did the Court of Appeals in the Jimmerson case, the decision would have in fact overruled prior decisions of the court. From this it may be stated that the duties of the taxing officials were well defined prior to the time when the Maccabees bought the warrants in question and the decision in the Jimmerson case.

The validity of the order of mandamus may be omitted in the con-
[fol. 80] sideration of this case, since that order was not obeyed by the officers, the assessment was not in obedience to this order, and its validity could not find support in the order, it follows that the assessment must stand independent of any support other than the laws and Constitution of this State, of which sufficient has been said. If we leave out of consideration the laws of this State and the decisions of our courts heretofore referred to, we must find from the plain terms of the Constitu-ion that the assessment in question is absolutely void. It is the duty of this court to uphold the Constitution and not to violate it.

Decree dismissing the complaint for want of equity may be prepared.

Respectfully, J. M. Futrell. JMF-EF.

[fol. 81] IN CHANCERY COURT OF CRAIGHEAD COUNTY

DECREE

The above consolidated cases this day (August 22, 1923) coming on to be heard, the plaintiff appears by its attorneys, and the defendant companies appear by their attorneys, and both parties announcing ready for trial, the cause is heard upon the complaints and exhibits, the answers and exhibits, stipulation of facts, certified copy of order of mandamus of Federal District Court, and the depositions of L. J. King, assessor of Craighead County, and Homer Howell, collector for Craighead county, from all of which the court finds that these are suits brought by the plaintiff against the defendants to

recover certain amounts alleged to be due upon the tax for general county purposes for the years 1921 and 1922, the amounts sued for as to the defendant, St. Louis-San Francisco Railway Company, being $9,021.87 for the year 1921 and $9,021.87 for the year 1922, a total of $18,043.74, and as to the defendant Missouri Pacific Railroad Company, $4,414.80 for the year 1921 and $4,362.40 for the year 1922. That the plaintiff also seeks to recover penalty of twenty-five (25) per cent upon the above amounts and all of them, and also seeks to recover interest upon the 1921 taxes since April 10, 1922, all at the rate of ten (10) per cent per annum. The defendant St. Louis-San Francisco Railway Company admits that it is due Craighead County for the year 1921 county taxes in the sum of $4,510.94 and for the 1922 county tax the sum of $4,510.94, and the defendant Missouri Pacific Railroad Company admits that it is due the county of Craighead the sum of $2,207.40 as taxes for the [fol. 82] year 1921 and $2,181.20 as taxes for the year 1922. The court finds that the defendants each did, on or before April 10th of the years mentioned, tender to the collector of Craighead County such amounts, which he refused to accept, and that since the filing of these suits neither of the defendants has delivered to the clerk of this court the amount of taxes which they severally admit to be due, but if said amount had been paid to the clerk, the plaintiff would not have accepted it.

The court orders and decrees that all depositions, stipulations and agreements offered in evidence on behalf of either party be and they are hereby made a part of the record herein.

The court, being fully advised, finds for the plaintiff against the defendant, St. Louis-San Francisco Railway Company, in the amount of $9,021.27, being the amount which it admits to be due covering the taxes for both 1921 and 1922.

The court further finds for the plaintiff against the defendant Missouri Pacific Railroad Company in the amount of $4,388.60, being the amount which it admits to be due covering the taxes for both 1921 and 1922.

The court further finds that the plaintiff should recover no interest on said amounts as against any of said defendants prior to the time fixed herein below.

The court further finds that a lien should be decreed against the whole line of the respective defendant railroad companies, including [fol. 83] the main line, sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, terminals, cuts, ties, trestles, and bridges for the amounts adjudged to be due by them respectively.

It is therefore by the court considered, ordered and decreed that the plaintiff have and recover of and from the defendant St. Louis-San Francisco Railway Company, the sum of $9,021.87, payable in cash or in warrants of Craighead County, and that a lien be and the same is hereby decreed on the whole line of the railway, including the main line, sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, terminals, cuts, ties, trestles and bridges, and all lands in the State belonging to said defendant.

It is further considered, ordered and decreed by the court that the plaintiff have and recover of and from the defendant, Missouri Pacific Railroad Company, the sum of $4,388.60, payable in cash or in warrants of Craighead County, and a lien be and the same is hereby decreed on the whole line of the railroad, including the main line, sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, terminals, cuts, ties, trestles and bridges belonging to said defendants.

That if the indebtedness herein adjudged be not paid within twenty days from this date, said property be sold on three months credit, at public sale, on giving twenty days notice in some newspaper published in Craighead County and having a bona fide cir-
[fol. 84] culation therein, to the best and highest bidder, a lien to be retained on the property until all of said indebtedness has been paid in full; and

It is further adjudged and decreed that Zera E. Watkins, clerk of this court, is hereby appointed as special commissioner of this court to make the sales herein ordered.

It is further by the court considered, ordered and adjudged that if the defendants do not pay to the clerk of this court the amount herein respectively alleged to be due by them within four months from the date of this decree, they, or any one of said companies in default in payment, shall, from the lapse of said four months period, pay interest on said judgment at ten per cent per annum until paid. The clerk, on receiving said sum, if it be not accepted by the plaintiff on account of taking appeal to the Supreme Court of the State, shall deposit said amount on time deposit in some responsible bank, at four per centum interest, said interest to go to the party litigant entitled thereto when any appeal herein shall have been finally determined.

With respect to the prayer of the complaints against the two defendant railroad companies in which the plaintiff seeks to recover the additional assessment made upon the railroad companies under the alleged authority of the mandamus order of the Federal court, it is by the court considered, ordered, adjudged and decreed that the plaintiff recover nothing, and with respect to said contention said com-
[fol. 85] plaints are hereby dismissed for want of equity.

It is further by the court considered, ordered and adjudged that the prayer for the imposition of the twenty five per centum penalty for delinquency upon the defendant railroad companies is without equity, and said complaints, so far as they relate to said penalties, are hereby dismissed for want of equity.

It is further ordered, adjudged and decreed that the plaintiffs pay the costs herein.

To which decree of the court the plaintiff excepted, both generally and in the following particulars:

(a) To the action of the court in refusing to recognize the validity of the Federal mandamus and the assessment made thereunder on the defendants.

(b) To the action of the court in refusing to impose the 25% penalty for delinquency in the payment of taxes upon the defendant railroad companies.

(c) To the action of the court in refusing to hold the defendant companies liable for interest on the ground that they had not kept their tender good.

(d) To the action of the court in adjudging costs against the plaintiff instead of against the defendants.

(e) To the action of the court in refusing to adjudge the 10% penalty provided by section 10209 of Crawford & Moses Digest.

[fol. 86] Plaintiff prayed an appeal to the Supreme Court of Arkansas, which is hereby granted.

J. M. Futrell, Chancellor.

[fol. 87] In Chancery Court of Craighead County

Petition for Rehearing—Filed October 3, 1923

Comes the plaintiff and for its petition for rehearing herein respectfully represents:

(1) That the court erred in holding that no Federal question is involved here, in that:

(a) The judgment of the United States District Court upon which the complaint herein is based represents an exercise of an authority under the United States, and the decision is against the validity of the exercise of that authority.

(b) The Federal District Court was established by Congress under the judicial power granted by the United States in article III, section 1, of the Federal Constitution; that the judicial power of said court, both under the Federal Constitution (art. III, section 2) and the acts of Congress pursuant thereto, extends to all "controversies between citizens of different States;" that the judicial power in cases where the requisite diversity of citizenship exists extends to all questions to be decided therein, including all questions affecting State Constitutions and statutes; that under clause 2 of article 6 of the Federal Constitution, the national judicial power, so created and defined, constitutes the supreme law of the land, and the judges in every State are bound thereby, anything in the Constitution or laws of any State to [fol. 88] the contrary notwithstanding. The decision in the present case denies these Federal rights and challenges the power of the Federal District Court to render the judgments alleged in the complaint and admitted by the answer, thus denying rights and powers existing both under the Constitution of the United States and the

acts of Congress made pursuant thereto, as said judgments were rendered in "controversies between citizens of different States."

(c). Art. 1, section 10 of the Federal Constitution provides: "No State shall make any * * * law impairing the obligation of contracts * * *." The contract in the present case (county warrants) were issued prior to any State decision that mandamus for full value assessment could not issue. At the time they were issued there was a Federal decision holding that it could issue. The contractual rights of the warrant holders made in reliance on the Federal decision could not be impaired by a subsequent State decision to the contrary, without contravening this clause of the Federal Constitution.

(d). Questioning the power or jurisdiction of a Federal Court is in itself a Federal question, because the jurisdiction or power of the court is to be determined from the Constitution and laws of the United States.

(e). Full faith and credit has not been given to the Federal judgments pleaded herein in violation of section 1 of article VI of the Federal Constitution and of the constitutional provisions mentioned in subhead (1) (b) hereof.

[fol. 89] 2. That the court erred in holding that taxpayers were not bound by the Federal judgments pleaded in the complaint.

(3). That the mandamus order and the proceedings thereunder represented the exercise of the ancillary jurisdiction of the Federal court. They constituted process of the Federal court employed to effect collection of the Federal judgment in favor of the Maccabees against Craighead County. Any irregularity or want of power in that process is a question for the Federal, and not for the State, courts, to decide. Hence the State chancery court in the case at bar has itself no power to question the power of the Federal court and thus interfere with the execution of Federal process.

(4). That there was a conflict between the Federal and State courts as to the right to mandamus assessing authorities in Arkansas to make full value assessment for taxation at the instance of a creditor of the county. The Federal court has the right and power to make its independent construction of State Constitutions and statutes, when necessary to protect rights of third parties contracted in reliance on a prior Federal decision, before a contrary decision on the precise point has been rendered by the highest court of the State. The decree herein denies that right and power.

(5). When a court has expressly passed upon it own jurisdiction, collateral impeachment of that decision is not permissible. The error can be corrected only on direct review.

[fol. 90] (6) A State court cannot challenge the jurisdiction of a Federal court to render a particular judgment. A lower Federal court has the exclusive original right to pass upon its own jurisdiction.

If it errs, the remedy is by review in a direct proceeding to upper Federal courts and not by collateral attack in a State court on the Federal judgment.

(7) The alleged defect of power here complained of, i. e., the fact that a Federal court interpreted the State Constitution and statutes differently from the State court, does not raise a jurisdictional question, nor a question of want of power; for

(a) Constitutional questions as well as all other questions become matter of res judicata.

(b) The assessing authorities who were mandamused had jurisdiction of the entire process of assessment; and the Arkansas State Tax Commission had power to require all property throughout the State to be assessed at full value.

(8) The objection of the defendants that the mandamus was too late for the year 1921 was untenable.

(9) The objection that the mandamus was not complied with because property was assessed at full value for county general purposes and at 50 per centum of true value for other purposes is not tenable, because:

(a) The mandamus related only to the county general assessment and did not require that assessment for other purposes be at [fol. 91] full value.

(b) Under this contention the error, if any was made, existed not in the county general assessment (which is the one involved here) but in the assessments for other purposes (which are not involved here).

(c) The error, if any, was favorable to the railroads and they therefore are not in position to complain.

(d) The railroads have waived any objection they might have had to such other assessments by paying the taxes thereon.

(10) The decree of the court is against the law.

(11) The decree of the court is against the evidence.

(12) The decree of the court is against both the law and the evidence.

Wherefore, the term of the court not having lapsed, plaintiff prays the court to grant a rehearing with respect to its determination of this cause, and render decree for plaintiff as prayed for in the complaint.

The petition for rehearing was denied by the court; exceptions of plaintiff saved, and prayer for appeal to Supreme Court of Arkansas granted.

[fol. 92] IN CHANCERY COURT OF CRAIGHEAD COUNTY

[Title omitted]

OPINION ON MOTION FOR REHEARING

The briefs on the motion to rehear raise no question not heretofore considered. Plaintiff contends at great length that the order of mandamus is binding on this court in the instant case. It would be if it were not void. I have not before heard it contended that a void judgment was binding upon another court in an independent suit, and that in such a case the court could not pass upon the validity of the judgment as affected by the jurisdiction and power of the court to render the particular judgment.

Much is said of the proposition that a court having first acquired jurisdiction of the subject-matter, it must be free from interference by any other court. The proposition is conceded without exception, but has no application here. This court is not attempting to set aside any order or judgment in the Maccabees case, nor to interfere in any way with an officer of that court in obeying the orders of the court in that case. Certain relief is sought in the instant case, and this *could* should not exist if it may not pass upon the questions presented. If it deems the order void, it should so hold, or cease to function.

It is true that if this case should be affirmed by the Supreme [fol. 93] Court of the State, it may be reviewed by the Supreme Court of the United States as to whether full faith and credit has been given to the order in the Maccabees case, provided that question was necessary to a decision in the case, otherwise not.

The order of the court may be omitted from this case as unnecessary to a decision. The order was not complied with in either form or substance, for which reason it may be considered as if no order had been made. How can an order of mandamus support that which it did not command? The assessment is condemned by the clear English of the State Constitution, without reference to any decision of our court. Plaintiff insists that the defendants may take no advantages of this fact, for the reason that, if the order had been obeyed, they would have been compelled to pay all taxes upon a 100 per cent valuation, whereas they were asked to pay upon this valuation for county purposes only. The assessment being in conflict with the Constitution, it must be void. It is a novel proposition that a void assessment may not be assailed. It must be remembered that the defendants have offered to pay upon the legal valuation ordered by the Tax Commission, the only legal assessment that could have been made. How are they to be required to do more?

The reasoning of the court in the cases of Vance v. Little Rock, 30 Ark. 435, and Graham v. Parham, 32 Ark. 676, is against the contentions of plaintiff. The court refers to the fact that the con- [fol. 94] stitutional provisions, then not a year old, could not apply to debts contracted before that time and to the fact that certain levies could be made to pay pre-existing indebtedness. It did not

appear from the record when the indebtedness for which the levy was to pay was made, and presumed that the Federal court was sufficiently advised. Again, the court was asked to undo directly what the Federal court had done.

In the Parham case the constitutional limit was not exceeded. This court is not asked to do what was attempted in those cases, and no such issues are presented. The question of res adjudicata is presented here. If the order of mandamus were valid and had been complied with, there would be nothing for this court to do except to give full effect to it. The converse is true.

J. M. Futrell.

[fol. 95] [Caption omitted]

IN SUPREME COURT OF ARKANSAS

MOTION AND ORDER TO ADVANCE

THE STATE OF ARKANSAS FOR THE USE OF CRAIGHEAD COUNTY, Appellant,

vs.

ST. LOUIS SAN FRANCISCO RAILWAY CO. ET AL., Appellees

Appeal from Craighead Chancery Court

Comes the appellant by her special attorney and presents a motion to advance this cause as of public interest; and sufficient cause for such advancement being shown, the said motion is passed one week for information as to what time the appellees will need to prepare and file their brief.

[fol. 96] IN SUPREME COURT OF ARKANSAS, November Term, 1923, December 24, 1923

[Caption omitted]

ORDER SETTING CAUSE

This cause, heretofore tentatively advanced, the time to be later definitely fixed, is now by the Court set down for submission on January 7th prox.

IN SUPREME COURT OF ARKANSAS, November Term, 1923, January 7, 1924

[Caption omitted]

SUBMISSION OF CAUSE

This cause being regularly called, come the parties thereto by their solicitors, and said cause is submitted upon the transcript of the record and the briefs filed, and is by the Court taken under advisement.

IN SUPREME COURT OF ARKANSAS, November Term, 1923, February 11, 1924

[Caption omitted]

JUDGMENT

This cause came on to be heard upon the transcript of the record of the chancery court of Craighead county, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decree- by the Court that the decree of said chancery court in this cause rendered be, and the same is hereby, in all things, affirmed with costs.

It is further ordered and decreed that said appellees recover of [fol. 97] said appellant all their costs in this Court in this cause expended.

Hart & Humphreys, J. J., concur.

[fol. 98] IN SUPREME COURT OF ARKANSAS

[Title omitted]

OPINION

MCCULLOCH, C. J.:

There are two consolidated actions involved in this appeal, one against the defendant St. Louis-San Francisco Railway Company and the other against the Missouri Pacific Railroad Company, each instituted in the chancery court of Craighead County by the Attorney General, in the name of the State of Arkansas, for the use and benefit of Craighead County, to recover delinquent county taxes due for the years 1921 and 1922.

It is alleged in the complaint that all property in Craighead County was assessed, for all purposes other than for county taxation, at fifty per centum of its actual value so as to conform to the rate of assessment in other counties, but that there was a separate assessment for county purposes at one hundred per centum valuation, and that this was done under the requirement of a mandamus issued by the United States District Court in a suit instituted by a creditor of the county to recover on past-due indebtedness. It was also alleged that said defendants in each case had paid the taxes extended against its respective property for all purposes other than county taxation, but had each refused to pay the county taxes as extended, and had tendered the amount of taxes due on a fifty per centum valuation. Each [fol. 99] of the defendants in its answer challenged the validity of the assessment on the ground that it was contrary to the laws of this State as interpreted by the court of last resort, and also denied that there had been any assessment of real property by the Tax Commission at a valuation of one hundred per centum.

The facts in the case are undisputed. On February 17, 1921, the United States District Court for the Western Division of the Eastern District of Arkansas, in an action in which an incorporated fraternal association named the Maccabees was plaintiff, and Craighead County was defendant, rendered a judgment in favor of said plaintiff and against said defendant for recovery of the sum of $77,680; and on March 2, 1921, said court, in an action instituted by said plaintiff, The Maccabees, against the assessing officers and Clerk of Craighead County, and the members of the State Tax Commission, to compel said officers to assess the taxes to pay said judgment against said county, entered a judgment directing that a mandamus issue against the assessing officers and the State Tax Commission requiring an assessment of property for taxes at full valuation. The particular language of this judgment was that "a mandamus issue requiring the defendant to assess, at its full value in money, all property in Craighead County, and to continue said assessment at its full value in money until the judgment of the plaintiff herein for $77,680 and costs shall have been paid in full."

It does not appear from the record in this case that the Tax Com- [fol. 100] mission made any change in its assessment of railroad property for the year 1921, but let its assessment stand as made throughout the State on railroad property at a valuation of fifty per centum. The assessor of Craighead County, however, assessed all property in Craighead County at fifty per centum for all purposes other than county taxes, and made a separate assessment for county purposes at one hundred per centum of the valuation, using an extra column on the assessment books for such separate assessment.

In the year 1922, the State Tax Commission, in compliance with the said mandamus issued by the United States District Court, adopted a resolution applicable to the taxable property of Craighead County commanding the assessor of Craighead County to "double the amount of the assessment as shown by the certificates of this Commission, for the purpose of extending thereon the general county tax rate for Craighead County, Arkansas, and that he show in a

separate column said fifty per centum assessment for the purpose of extending State, three-mill county road tax, school district tax and municipal corporation tax thereon." In each of the years the taxes were extended on the books for county purposes on the basis of one hundred per centum valuation, but for all other purposes on the basis of fifty per centum valuation. Each of the defendants in these actions paid the taxes for all other purposes, but refused to pay the taxes extended against its property for county purposes and tendered [fol. 101] the amount due on an extension based on a valuation of fifty per centum. The tender was refused, and this action was instituted to compel the payment.

The chancellor held that the assessment at full valuation for county purposes was void, and rendered a decree for the recovery by plaintiff of the amount of taxes tendered by each of the defendants; that is to say, the amount of taxes on a basis of fifty per centum valuation.

We are unable to agree with the learned chancellor in his view that the judgment of the United States District Court is void because it attempts to impose on the assessing officers a requirement contrary to the Constitution of the State, as interpreted by this court. It is true that the judgment of the court was not in accord with the Constitution, as interpreted by this Court, with respect to the requirement of uniformity throughout the State in the assessment of property. State ex rel. v. Meek, 127 Ark. 349. In that case we held that there must be uniform valuation of property for taxation purposes throughout the State, and that the tax assessor of a given county could not be compelled by mandamus to assess property in his county at full valuation so as to put the assessment out of conformity with other assessments in the State as directed by the State Tax Commission. The decisions of the United States Circuit Court of Appeals for the Eighth Circuit are in conflict with the decision of this court on [fol. 102] that subject (United States, ex rel. Jimmerson, 222 Fed. 489), and the district courts in this circuit are therefore bound by those decisions. United States ex rel. Cargill, 263 Fed. 856. The court of last resort of the State is, of course, the final arbiter in the interpretation and construction of the Constitution and statutes of the State. A conflicting decision of the Federal court does not constitute a precedent to be followed by the State court, but the judgment itself in a given proceeding constitutes a final adjudication of the subject-matter of the litigation so as to bind the State courts under the provision of the Constitution and statutes of the United States requiring full faith and credit to be given to the judgments of the Federal courts. That is to say, the Federal court has jurisdiction of the subject-matter to adjudicate the rights of the partues to the action and their privies. Any judgment rendered thereon will be binding on the State courts, even though the decision is found to be in conflict with the decision of the court of last resort of the State in the interpretation of the Constitution and laws of the State. There is just that distinction between the doctrine of res adjudicata and the doctrine of stare decisis. The Federal courts exercise an independent

judgment in the construction of the Constitution and statutes of the State in which the cause of action arises, and they usually follow the interpretation adopted by the court of last resort in the State, but any error in that respect must be corrected by appeal and does not render [fol. 103] the judgment void. There are many announcements of this rule by the Supreme Court of the United States and the cases are so numerous that it is scarcely necessary to cite them. They are collected in the briefs of counsel in the case.

As a late announcement on this subject, reference is made to the comparatively recent case of Kuhn v. Fairmont Coal Co. 215 U. S. 349, and the still later case of Cumberland Glass Mfg. Co. v. De Witt, 237 U. S. 447. In the application of this rule it follows that the United States District Court in the litigation between the Maccabees and Craighead County, involving the right to recover for debt and to enforce the judgment, the court had jurisdiction to compel the assessing officers to make an assessment of property for the purpose of raising funds to pay the judgment, and its decision in the interpretation of our Constitution with respect to the limitation upon the taxing power, though in conflict with the interpretation given by this court, was not void for the reason that the jurisdiction of the court, based on the diversity of citizenship of the parties, in the decision of the rights of the parties to that action, drew to that court the jurisdiction to interpret the laws under which the cause of action, if any existed, arose. Riggs v. Johnson, 6 Wall. 195; Prout v. Starr, 188 U. S. 537. There are decisions of this court holding that even though a Federal court erres in its adjudication with respect to the taxing power of this State, the judgment of that court is binding upon the State court as to rights adjudicated in that particular action, even though in conflict [fol. 104] with decisions of this court in the interpretation of the Constitution and laws of the State. Vance v. City of Little Rock, 30 Ark. 435; Graham v. Parham, 32 Ark. 676; Gaines v. Springer, 46 Ark. 502; Garland County v. Hot Spring County, 68 Ark. 83.

The decisions of the Supreme Court of the United States concerning the jurisdiction of Federal courts are conclusive upon the State courts, and that court has decided that it is within the jurisdiction of the Federal court to compel the assessing officers of a State to levy the full limit of taxes allowed by the laws of the State for the purpose of enforcing its judgment. Memphis v. Brown, 97 U. S. 300; United States v. Ft. Scott, 99 U. S. 152.

Counsel for defendants rely on the decision of the Supreme Court of the United States in Ex parte Rowland, 104 U. S. 604, but that case has no application for the reason that it involved a mandamus against officers of a county who had no authority under the laws of the State to assess or levy taxes.

When the effect of the judgment of the Federal court is called in question in subsequent litigation in a State court in which the latter has jurisdiction of the subject-matter and of the parties, the State court may determine for itself the scope and extent of that judgment, though that is a Federal question, which may be reviewed by the Supreme Court of the United States, on proper application, by writ of

error or certiorari. An error of the State court in a decision as to the [fol. 105] effect of the Federal court judgment would have to be corrected in that way. It is therefore proper for us to consider at this point of the controversy what is the effect of the judgment of the Federal court, and this must be determined from an examination of the face of the record in the case in which the judgment was rendered.

The judgment directed that the assessing officers of the county "assess at its full value, in money, all property in Craighead County." This does not specify the mode of assessment, and that is left to the operation of the State laws as construed by this court. It does not direct that the assessment shall extend only to county taxation, but it applies to the whole assessment. This court has decided in a recent case that under the Constitution of this State there can only be one assessment of property for all purposes of taxation—State, county, municipal and school. Hays v. Missouri Pacific R. R. Co. 159 Ark. 101. The effect of the judgment of the Federal court, therefore, was to compel the assessing officers to assess all the property in the county at full valuation, in the mode provided by the laws of the State; that is to say, by a single valuation for all taxation purposes. It must be noted, then, that the valuation made by the assessing officers did not conform to the judgment of the Federal court in assessing at a full valuation, nor in conformity with the laws of the State, as declared by this court, in making such an assessment as would be in uniformity with the assessments of property in other counties. The [fol. 106] assessing officers followed neither direction, but made two separate valuations for taxation purposes, which was, according to our decision in the Hays case, supra, unauthorized by law. Are the taxpayers bound by such an assessment? They are bound by an assessment made in accordance with the adjudication of a court having jurisdiction in an action against the assessing officers, for the reason that they are held to be privies to the action as being represented by the assessing officers in a matter in which the taxpayers are necessarily interested. Ashton v. Rochester, 133 N. Y. 187, 105 Am. St. Rep. (note) 212; 2 Vanfleet on Former Adjudications, 1153. They are not bound by an assessment not authorized either by the judgment of the court or by the laws of the State. The assessing officers may be held to be in contempt of court for failure to make the assessment in accordance with the judgment of the court, but the taxpayers cannot be held to compliance with the judgment unless the assessment be made in accordance therewith; they are only bound by an assessment made in accordance with the judgment. The taxpayer cannot be held to pay until there has been a valid assessment of taxes in accordance with law, or unless there is other statutory authority for collecting the tax without a previous valid assessment. It is contended by counsel for plaintiff that if it be conceded that the assessment was not made in accordance with the direction of the Federal court judgment, the effect was merely to relieve the taxpayers from a portion of the tax which would have been imposed by a full valuation [fol. 107] assessment by omitting the full valuation from the taxes for State, municipal and school purposes, and that they cannot com-

plain of this reduction. Counsel rely on the decision of this court in the recent case of Summers v. Brown, 157 Ark. 509. That decision does not, however, have the application here that counsel contend for. In that case there had been a valid assessment for all purposes, and the clerk, following the erroneous direction of the equalization board and the county court, reduced the taxes to one-half of the amount originally assessed. We held that the reduction was void, but that the taxpayer could not complain and escape payment of the amount of taxes extended against his property. In the present case there has been no valid assessment, either under the direction of the Federal court judgment or the laws of the State, therefore the taxpayers were not bound by the illegal assessment.

It is further contended by counsel for the plaintiff that these actions were brought under the statute (Crawford & Moses Digest, Sec. 10204 et seq.) authorizing suits in equity to be brought against corporations for the collection of over-due taxes, and that there should be a recovery in accordance with the valuation directed by the Federal court judgment, even though it be found that the assessment was not in accordance with the judgment. The courts of the State are not bound to that extent by the judgments of the Federal court. Under the statute referred to, the courts are authorized and empowered to [fol. 108] adjudicate and enforce collection of delinquent taxes which are authorized by the laws of the State—not those merely directed by the judgment of another court.

Each of the defendants in these cases have offered to pay at the outset the amount due upon its property in accordance with the Constitution and laws of this State, and they cannot be compelled, under the statute referred to above, to pay more than that merely because there has been an adjudication of another court. The chancery court awarded the plaintiff a decree against each of the defendants for those amounts.

Courts of equity, under the statute referred to, are authorized to enforce only the taxation laws of this State as interpreted by the Supreme Court of this State. The Federal court did not determine the amount that each taxpayer was to pay, but adjudged that there should be an assessment by the assessing officers at a full valuation, and, as before stated, this was not done.

Finally, it is contended that the court erred in refusing to adjudge a penalty, interest and costs on the defendants on account of their failure to make their tender good, but that contention is not sound for the reason that the tender was refused. Each of the defendants pleaded a tender of the proper amount, which was, in effect, a continuing offer to pay that amount.

Before closing the discussion, reference should be made to the fact that the State Tax Commission did not, in fact, change its assessment [fol. 109] of railroad property for the year 1921 and raise it to a full-value assessment. There was correspondence between the assessor and the Secretary of the Tax Commission, in which the latter expressed his individual opinion as to what the assessor should do, but there does not appear in the record any order of the Tax Com-

mission raising the assessment on railroad property to full valuation. This affords additional reason why there can be no recovery of taxes for the year 1921 on a full valuation basis. It is unimportant, however, since we hold, for the reasons hereinbefore stated, that there can be no recovery for the taxes for either year on a full valuation basis.

The decree is therefore affirmed.

Hart and Humphreys, J. J. concur.

[fol. 110] In Supreme Court of Arkansas, November Term, 1923, February 25, 1924

(Caption omitted)

Order Extending Time

The appellant having filed a petition for rehearing within the time allowed by law, and now praying for time in which to file a supporting brief, the said petition is passed by the Court one week for such briefs and response.

In Supreme Court of Arkansas, November Term, 1923, March 3, 1924

(Caption omitted)

Submission of Cause on Petition for Rehearing

The petition for rehearing filed in this cause being called, is now submitted, with the briefs filed and response thereto, and is by the Court taken under advisement.

[fol. 111] In Supreme Court of Arkansas

[Title omitted]

Motion for Rehearing and Order Overruling Same

Appellant prays that the court grant rehearing in the above entitled cause for the following reasons:

(1). The court erred in holding that the assessment was not made in compliance with the Federal mandamus because it was not doubled for all taxing purposes as well as for county general tax purposes, because:

(a). The court should have considered the pleadings as well as the face of the judgment in arriving at the interpretation of the Federal mandamus.

(b). The order of mandamus should not have been interpreted by this court in such a manner as to make it violative of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution which the order of mandamus will do if there be a 100% assessment for State purposes in Craighead County with a 50% assessment for State purposes in the other counties of the State.

(c). The Federal order of mandamus was rendered under interpretation of equality and uniformity laws of the State Constitution which is directly opposite to the interpretation of the same clause given by this court. Notwithstanding the fact that the Federal mandamus was issued on a wholly opposite view of the construction [fol. 112] of the State constitution this court has in this case applied the State view rather than the Federal view in determining the construction and operation of the mandamus. In thus refusing to follow the Federal view of the interpretation of the State Constitution in construing the Federal order of mandamus this court has failed to give full faith, credit and effect to the Federal order of mandamus. Full faith and credit required that the Federal interpretation of the the State Constitution should be applied not only in rendering the mandamus but in construing its operation and effect.

(d). The interpretation of the Federal mandamus as made by this court violates Section 18 of Article 2 of the Arkansas Constitution prohibiting the granting to any citizen or class of citizens privileges or immunities on the same terms which shall not equally belong to all citizens.

(e). Appellant also reaffirms the authorities cited and arguments made in the original brief for appellant on the proposition that the assessment should be doubled for county purposes only.

(2). The court erred in holding that the Corporation Overdue Tax Law is not applicable to assessments made by assessing authorities on account of Federal mandamus and the reasoning of the court that this statute applies only to taxes authorized by the laws of the State as construed by the Federal court is violative of the Federal Constitution in that it denies full faith, credit and effect to the Federal Mandamus judgment. The denial by a State court of a State remedy in the enforcement of a Federal judgment merely because that judgment is of Federal origin constitutes a denial in contravention of the Constitution of the United States of full faith and credit clause therein and of the due force and effect required by the terms of that Constitution to be given by State courts to Federal judgments when [fol. 113] involved in actions pending in the State courts.

Wherefore appellant prays that this cause be reheard, that the court declare that the assessment as made was valid or in any event that the Corporation Overdue Tax law is applicable here with the result that the errors alleged to have been made in the assessment may be corrected in the manner pointed out by that act in this suit and that the cause be remanded to the chancery court with directions to have the assessments so made.

Respectfully submitted, J. S. Utley, Attorney General of the State of Arkansas, and A. P. Patton, Horace Sloan, Special Counsel for Craighead County.

Certificate of Counsel

We, A. P. Patton and Horace Sloan, special counsel for appellant in the above entitled cause, do hereby certify that we have carefully read and considered the opinion of the court in the above entitled cause and that it is our opinion and judgment that the grounds alleged in the foregoing motion for rehearing are meritorious.

A. P. Patton, Horace Sloan, Special Counsel for Craighead County.

Filed Feby. 23, 1924. W. P. Sadler, Clerk.

[fol. 114] November Term, 1923, March 10, 1924

(Caption omitted)

Being fully advised, the petition for rehearing filed in this cause, is by the Court overruled.

[fol. 115] In Supreme Court of Arkansas

Clerk's Certificate

I, W. P. Sadler, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings, as called for in the stipulation hereto attached and made a part hereof, in the case of State of Arkansas, ex rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, Appellant, vs. St. Louis-San Francisco Railway Company and Missouri Pacific Railroad Company, Appellees, and also of the opinion of the court rendered therein as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this May 23, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

[fol. 116] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 10, 1924

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Arkansas, in the above entitled matter there is manifest error in this, to-wit:

First. The Supreme Court of Arkansas has erred in upholding the validity of a statute of the State of Arkansas which statute, as construed by the Arkansas Supreme Court contravenes the Federal Constitution, that is to say: The Supreme Court of Arkansas has construed the provisions of Sections 10204-10214 of Crawford & Moses' Digest of the Statutes of Arkansas [The Corporation Overdue Tax Law] to provide a remedy only for the collection of taxes approved by judgments of the courts of the State of Arkansas and has held that said statute does not furnish a remedy for the collection of overdue taxes extended on the tax-books of the county pursuant to an order of mandamus rendered by a Federal District Court; and that said statute, when so construed, contravenes the Constitution of [fol. 117] the United States in that it denies to the judgment of a Federal District Court the same force and effect, the same construction and operation, and the same methods of enforcement that would be granted by the State Supreme Court to a judgment rendered by a court of the State of Arkansas; and both in so construing said statute and in so upholding the validity of said statute as so construed, the Supreme Court of Arkansas has failed and refused to give due force and effect and full faith and credit to the Federal judgment in mandamus, all in contravention of the judicial power granted to the Federal Courts by Article LLL of the Constitution of the United States and the Acts of Congress enacted pursuant thereto and in further contravention of clause two of Article VI and of Section 1 of Article IV of the Constitution of the United States.

Second. In this case was drawn in question the validity of an authority exercised under the United States, and the decision of the Arkansas Supreme Court was against the validity of said authority in that the said Supreme Court of Arkansas held that a judgment in mandamus rendered by a United States District Court ordering the assessment of property for taxation at full value could not form the basis or foundation for a suit to collect overdue taxes filed under the provisions of Sections 10204-10214 of Crawford & Moses' Digest of the Statutes if Arkansas, the said State Supreme Court holding that said statutes so providing for the collection of overdue taxes could be employed to collect only taxes approved by the courts of the State and not taxes ordered to be assessed or levied by a United States District Court. In so construing said statute and in so refusing to give the same force and validity to a Federal judgment that it would have given to a judgment rendered by a court of the

State of Arkansas, the Supreme Court of Arkansas has failed and refused to give due force and effect and full faith and credit to the Federal judgment in mandamus, in contravention of the judicial power granted to Federal courts by Articles III of the Constitution of the United States, and the acts of Congress enacted pursuant thereto and in further contravention of Clause 2 of Article VI and of Section 1 of Article IV, of the Constitution of the United States.

[fol. 118] Third. The court erred in holding and adjudging that the proper interpretation, scope, extent, operation and effect of the Federal mandamus involved herein was to require that the assessment for taxation of taxable property in Craighead County should be made by the assessing officials at full value in money not only for the purpose of county general taxation but also for the purpose of State, school district and municipal corporation property taxation, and thereby failed and refused to give due force and effect and full faith and credit to the Federal judgment in mandamus in contravention of the judicial power granted to Federal Courts by Article III of the Federal Constitution and the Acts of Congress enacted pursuant thereto in "controversies between citizens of different States," and in further contravention of clause 2 of Article VI of the Federal Constitution, and of Section 1 of Article IV of the Federal Constitution, for the following reasons:

(1) Because the proper construction of the Federal mandamus as stated by the judge rendering it, was that it required a full value assessment for county general purposes only.

(1a) Because the Supreme Court of Arkansas erred in not construing the Federal Mandamus according to the Federal interpretation of the Arkansas Constitution and statutes under which the mandamus was, in fact, rendered. On the other hand, the Supreme Court of Arkansas construed the Federal mandamus according to its interpretation of its own decisions under which such a mandamus could never have ordered in the first place.

[fol. 119] (2) Because, in arriving at such interpretation, the Supreme Court of Arkansas considered only the face of the judgment when it should also have considered the pleadings upon which the mandamus judgment was based. The pleadings show that a full value assessment for county general purposes only was the only assessment involved, and that only one of which the Federal Court issuing the mandamus order had any jurisdiction. Under the pleadings any attempt by the Federal Court to make an order with respect to the valuation of property for the purpose of imposing State, school district and municipal corporation property taxes would have been coram non judice and void.

(3) Because the State Supreme Court construction of the Federal mandamus makes that mandamus deny to persons in the jurisdiction of the State the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution in that within the limits of the same taxing district, viz: the State, the assessment

of property for taxation for State purposes in Craighead County would be at full value of the property assessed, whereas the same assessment for the same purpose in the other counties of the State would be made on a basis of fifty per centum of the full value of the property assessed, when that mandamus, as construed by the Federal judge rendering it and as acted upon by the State assessing authorities, did not have such effect.

Fourth. The court erred, even assuming that its interpretation of the Federal mandamus was correct, in adjudging and holding that the effect of that interpretation is to render void and uncollectible the assessment of property for taxation upon which the taxes herein sued for are based, and thereby failed and refused to give the due and proper force and effect and full faith and credit to the Federal judgment in mandamus in contravention of the judicial [fol. 120] power granted to Federal Courts by Article III of the Federal Constitution and the Acts of Congress enacted pursuant thereto in "controversies between citizens of different States," and in further contravention of clause 2 of Article VI of the Federal Constitution, and of Section 1 of Article IV of the Federal Constitution, for the following reasons:

(1) The error, if any, in the practical application of the mandamus, in making a full value assessment for county general purposes and an assessment at fifty per centum of true value for State, school district and municipal corporation taxes, was an error favorable to all taxpayers, including the railroads sued here. No taxpayer, including the defendants in error, was, therefore, in a position to complain or to raise an objection because they were not discriminated against or adversely affected.

(2) The error, if any, would affect the assessments for State, school district and municipal corporation taxes and not the assessment for county general purposes, which would have been placed at full value in any event.

(3) The error, if any, in such assessments for State, school district and municipal corporations, in failing to make the same at full value, was waived by the defendants in error through their action in paying said taxes without objection or complaint.

Wherefore plaintiff in error prays that writ of error from the Supreme Court of the United States to the Supreme Court of Arkansas and prays that the Supreme Court of the United States will reverse the said final order and judgment of the Supreme Court of the State of Arkansas, and that plaintiff in error be restored to all things which it has lost and further may have such other relief as [fol. 121] may be proper and just.

Dated this the 18 day of April A. D. 1924.

Respectfully submitted, J. S. Utley, Attorney General; A. P. Patton, Horace Sloan, Special Counsel for Craighead County.

[File endorsement omitted.]

[fol. 122] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR AND ORDER ALLOWING WRIT OF ERROR—Filed May 10, 1924

To the Hon. Edgar A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas:

Your petitioner, State of Arkansas, Ex rel., J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, respectfully shows:

That in the above entitled cause the Supreme Court of Arkansas, (being the highest court in Arkansas in which decision in this suit could be had) has entered its final judgment herein against this petitioner; that this suit was brought by your petitioner under the provisions of the Corporation Overdue Tax Law of the State of Arkansas, [Crawford & Moses Digest of the Statutes of Arkansas, Sections 10204-10214] for the purpose of enforcing the collection of delinquent taxes due in Craighead County by the defendants in error respectively.

That said taxes were based on assessments for taxation under general property tax made by the assessing authorities of the county under and pursuant to an order of mandamus issued against them by the United States court for the Eastern District of Arkansas, Western Division.

[fol. 123] That the judgment of the Supreme Court of Arkansas was that the said Federal Court had the power to issue said writ of mandamus except insofar as a judgment in mandamus might be used as a basis for new assessment under the provisions of the Corporation Overdue Tax Laws of Arkansas, but that said assessment of property for taxation had not been made in compliance with the mandamus for the reason that the assessment also placed at full value for county general purposes only and not at full value for the purposes of the other taxing units of the State. In said cause it was contended by your petitioner that, if there was any defect in said assessment, it was the duty of the court to order new assessment made eliminating said defects under and by virtue of the provisions of said Corporation Overdue Tax Law. It was further contended by your petitioner that the proper interpretation and construction of the Federal mandamus was that it required a full value assessment for taxation for county general purposes only and not for State, municipal or school district taxes.

Your petitioner respectfully represents that in holding that the Federal court judgment could not constitute a basis for a new assessment under the provisions of the Corporation Overdue Tax Law there was a decision by this court against the validity of an authority exercised under the United States adverse to the claim asserted by your petitioner.

Your petitioner further respectfully represents that in construing the Federal order of mandamus to leave the question open for a decision by the State Supreme Court as to whether the assessment of property for taxation should have been made at full value for all purposes or for county general purposes only, the Arkansas Supreme Court misconstrued the interpretation and effect of the said manda-
[fol. 124] mus and the Arkansas Supreme Court further erred in holding that the effect of its own interpretation of what was required under the Federal mandamus was to invalidate and render uncollectible the taxes herein sued for.

In this cause title, rights, privileges and immunities were claimed by your petitioner under the Constitution of the United States, the Statutes of the United States and under an authority exercised under the United States and the decision of the Supreme Court of Arkansas, was against the claim for such title, rights, privileges and immunities so specially set up by your petitioner under the Constitution and Statutes of the United States and under an authority exercised under the United States.

Your petitioner files herewith its assignment of errors, its prayer for reversal and its bond on writ of error and prays that a writ of error be allowed to the Supreme Court of the United States to review said judgment of the Supreme Court of Arkansas.

State of Arkansas ex Rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, by J. S. Utley, Attorney General; A. P. Patton, Horace Sloan, Special Counsel for Craighead County.

[File endorsement omitted.]

Let the writ of error issue upon execution of cost bond by the plaintiff in error to the defendants in error for the sum of $500.00, such bond, when approved, the May 5, 1924.

E. A. McCulloch, Chief Justice of the Supreme Court of Arkansas.

[fols. 125 & 126] Bond on Writ of Error for $500.00—Approved and filed May 10, 1924; omitted in printing

[fol. 127] IN SUPREME COURT OF ARKANSAS

[Title omitted]

WRIT OF ERROR—Filed May 10, 1924

The President of the United States of America to the Honorable the Judge of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings and also in the rendition of the Judgment of a plea which is in the said Supreme Court of the State of Arkansas before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had on the suit between State of Arkansas, ex rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, as appellants, and St. Louis-San Francisco Railway Company and Missouri Pacific Railroad Company, as appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute, or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in [fol. 128] favor of their validity; a manifest error hath happened to the great damage of the said State of Arkansas and the said Craighead County, Arkansas, as by its complaint appears; and we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 10 day of May, the year of our Lord One Thousand Nine Hundred and Twenty-four.

Sid B. Redding, Clerk United States District Court for Western Division of Eastern District of Arkansas. H. H. Harrelson, D. C. (The Seal of the District Court, Western Division, East. Dist. Ark., U. S. A.)

Allowed May 10, 1924. E. A. McCulloch, Chief Justice Supreme Court of Arkansas.

[File endorsement omitted.]

[fol. 129] STATE OF ARKANSAS, ss:

IN SUPREME COURT OF ARKANSAS

CERTIFICATE OF LODGMENT

I, W. P. Sadler, clerk of the said court, do hereby certify that there was lodged with me as such clerk on May 10, 1924, in the matter of State of Arkansas, Ex Rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, versus St. Louis-San Francisco Railway Company and Missouri Pacific Railroad Company,

1. The original bond of which a copy is herein set forth.

2. Copies of the writ of error, as herein set forth, one for each defendant, and one to file in my office.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this May 23, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.]

[fol. 130] IN THE SUPREME COURT OF THE UNITED STATES

CITATION—In usual form, showing service on W. J. Orr; omitted in printing.

[fol. 131] IN SUPREME COURT OF ARKANSAS

RETURN TO WRIT OF ERROR

UNITED STATES OF AMERICA,
Supreme Court of Arkansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the city of Little Rock, this May 23, 1924.

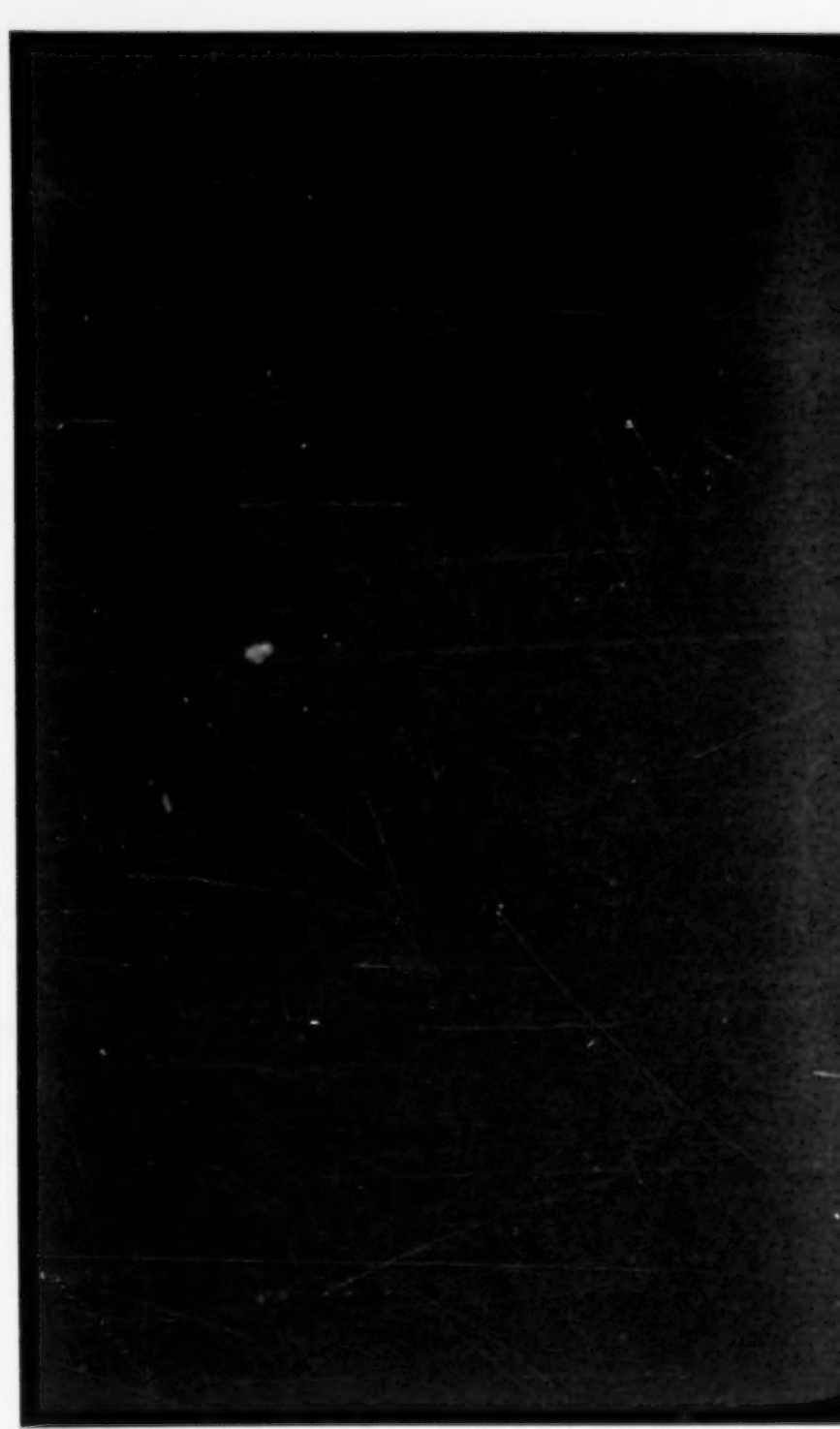
W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkanasas.)

Costs of Suit

Chancery court costs.....32.20
Supreme Court " 62.50

Costs pursuant to Writ of Error 37.50, Paid by plaintiff in error.

Endorsed on cover: File No. 30,369. Arkansas Supreme Court. Term No. 410. State of Arkansas, ex rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, Plaintiff in Error, vs. St. Louis-San Francisco Railway Company and Missouri Pacific Railroad Company. Filed May 26, 1924. File No. 30,369.



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AUTHORITIES.

In the Supreme Court of the United States

October Term, A. D. 1924.

STATE OF ARKANSAS, EX REL., J. S. UTLEY, Attorney General of the State of Arkansas, for the Use and Benefit of Craighead County, Arkansas, *Petitioners.*

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and MISSOURI-PACIFIC RAILROAD COMPANY, *Respondents.*

No. 410.

BRIEF FOR PETITIONERS.

Petition for Writ of Certiorari, requiring the Supreme Court of Arkansas, to certify to the Supreme Court of the United States for its review and determination the case of State of Arkansas, ex rel., J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, Appellant, v. St. Louis-San Francisco Railway Company and Missouri-Pacific Railroad Company, Appellees.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petition of the State of Arkansas, ex rel., J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, for a writ of certiorari for the purpose of reviewing the final judgment of the Supreme Court of the State of Arkansas (being the highest court in that State in which a decision in this suit could be had), where petitioner specially set up and claimed a title, right and privilege under the Constitution, and statutes of the United States and under an authority of the United States, to-wit: The due force and effect and full faith and credit that should be given by a State Court to a judgment of the District Court of the United States in mandamus, respectfully shows to the court:

Nature of the Case.

1. **The Federal Order of Mandamus.** In a suit in which it had jurisdiction on account of diversity of citizenship, the Federal District Court, on county warrants payable solely out of the county general tax, rendered a judgment at law for $77,680.00 against Craighead County in favor of the Maccabees, a Michigan fraternal order. This was followed by a mandamus proceeding in which, after due service of summons on the assessing authorities as defendants, the following order was made:

> "* * * It is ordered, considered and adjudged that a mandamus issue, requiring the defendants to assess at its full value in money

all property in Craighead County, and to continue said assessment at its full value in money until the judgment of the plaintiff herein for $77,680.00 and costs shall have been paid in full; and it appearing that the property in said county has heretofore been assessed at not exceeding 50 per cent of its assessed value, it is ordered that said mandamus require that the total assessment made hereunder shall be at least double the amount of the total assessment heretofore made. It is further ordered that service of a copy of this order be deemed a sufficient service of the mandamus."

2. **Assessment Under Mandamus.** By order of the State Tax Commission all property in Arkansas is usually assessed at fifty per centum of true value. But, in the taxing years 1921 and 1922, pursuant to the Federal mandamus, taxable property in Craighead County was assessed at one hundred per centum of true value for county general purposes, and at fifty per centum of true value for other purposes, namely, State, municipal and school taxes. All taxes were paid on these assessments, except by the railroads sued here.

3. **This Suit.** On July 19, 1923, separate suits were filed against the two railroads, in the Chancery Court for the Western District of Craighead County, Arkansas, under the provisions of the Corporation Overdue Tax Law (Crawford & Moses' Digest of the Statutes of Arkansas, 10204-10214) for county general taxes aggregating $26,-820.94, plus penalty, interest and costs. The Arkansas Corporation Overdue Tax Law (C. & M.

D., 10208) provides that in suits brought under it new assessments may be made if there be no assessment or the old one be defective. These railroads had paid all taxes assessed on a fifty per centum basis. The two suits were consolidated.

4. **The Defense.** The railroads relied on three propositions: First, that the mandamus order of the Federal Court, though never appealed from and standing unreversed, was null and void as beyond the jurisdiction and power of the Federal Court, and, secondly, that if the order was valid, the assessment should have been made at one hundred per centum for all purposes, and not solely for county general purposes; and, thirdly, that the Arkansas Tax Commission had not in fact made a full value assessment as against the railroads for the year 1921.

5. **Holding of Arkansas Supreme Court.** Upon appeal to it the Supreme Court of Arkansas held that the Federal Court had jurisdiction and power to render the order of mandamus, but denied a recovery against the defendants: First, on the ground that the proper construction of the Federal order of mandamus required that the assessment be placed at full value for all the taxes as well as for county general taxes; secondly, that the Arkansas Tax Commission had not in fact made a full value assessment of railroads for the year 1921; and thirdly, that no new assessment could be made under the Corporation Overdue Tax Law for the reason that under such law a Federal judgment has no force or effect.

Legal Propositions Here Involved.

6. As there are no disputes about the facts, the only questions here involved are questions of law. We submit that the Supreme Court of Arkansas has denied full force and effect to the Federal judgment in mandamus in the following particulars:

First: In misconstruing the Federal mandamus by holding that it requires a full value assessment to be made for all taxing units as well as the county against which alone the Federal judgment was obtained.

Second: In misapplying its own interpretation of the mandamus by holding that a failure to make a full value assessment for other taxing units invalidated a full value assessment for the county, which would have been placed at full value in any event.

Third: In refusing to give said judgment any effect whatever as establishing a right to collect taxes under the Arkansas Corporation Overdue Tax Law.

The Misconstruction of the Federal Mandamus.

7. **Conflict Between Federal and State Courts.** The right of a creditor of a county to secure by mandamus against the assessing authorities a full value assessment of property for taxation has been the source of much conflict between the lower Federal Courts and the Supreme Court of Arkansas. In *United States* v. *Jimmerson* (1915), 222

Fed. 489, the Circuit Court of Appeals for the Eighth Circuit held that such a mandamus would lie. In *State* v. *Meek* (1917), 127 Ark. 349, the Supreme Court of Arkansas held otherwise. Followed in *Eureka Fire Hose Mfg. Co.* v. *Deffenbaugh,* (1917) 129 Ark. 41; *Dickinson* v. *Housley,* (1917) 130 Ark. 259. In *United States* v. *Cargill,* (1920) 263 Fed. 856, the Circuit Court of Appeals for the Eighth Circuit held that, notwithstanding the intervening Arkansas decisions, it would still grant a writ of mandamus to a creditor holding county obligations issued prior to the date of the State decision in *State* v. *Meek, supra.* In the instant case the county warrants sued upon were issued in 1916 and the Federal District Court followed the *Cargill* case in granting the mandamus.

8. **Interpretation of Arkansas Supreme Court.** In interpreting the mandamus the Supreme Court of Arkansas says:

> "The judgment directed that the assessing officers of the county 'assess at its full value, in money, all property in Craighead County.' This does not specify the mode of assessment, and that is left to the operation of the State laws as construed by this court."

The court then holds that under the State laws, as interpreted by it, the assessment should have been placed at full value for all purposes. But, in the very nature of the case, the State decisions could furnish no guide for the proper interpreta-

tion of a Federal mandamus, because under the State decisions *no mandamus whatever could be granted.*

9. **Errors in Such Interpretation.** In adopting this interpretation, we submit that the Arkansas Supreme Court erred:

(1) Because it paid no attention either to the pleadings or to the jurisdiction of the Federal Court as limited thereby. Since the mandamus suit was a suit solely against the county for the purpose of collecting a debt due solely by the county, as shown by the pleadings, the Federal District Court had no jurisdiction to order that an assessment be made at full value for State, municipal and school purposes. Its jurisdiction was necessarily limited to county taxes.

(2) Because no interpretation should be given to the mandamus that would make it deny the equal protection of the laws. To assess property having a taxable situs in Craighead County at full value for State taxes when the other 74 counties of Arkansas pay State taxes on a fifty per centum basis constitutes a clear, hostile, and palpably arbitrary discrimination against taxpayers in Craighead County. It is not lightly to be presumed that such was the intent of the Federal District Court. Assessing property for county taxes only at full value did not have this effect, because it bore equally on all persons and property in the same taxing unit.

The Misapplication of the State Supreme Court's Own Interpretation of the Mandamus.

10. It does not follow, as held by the Arkansas Supreme Court, that the failure of the assessing authorities to make a full value assessment for all taxing units whether sued or not, invalidated the taxes here sued for, because:

First: The error, if any, was favorable to all taxpayers, including the respondents here. It conferred a positive benefit upon them, because it reduced by one-half their State, municipal and school taxes. No one may complain of a matter which does not affect him adversely.

Second: The error, if any, would affect the State, municipal and school taxes, and not the county general taxes, which would have been placed at full value in any event.

Third: The error, if any, in failing to make the assessment for State, municipal and school purposes at full value was waived by respondents through their own action in paying without protest or complaint such State, municipal and school taxes.

The Refusal of the State Supreme Court to Give Effect to the Mandamus Under the Arkansas Corporation Overdue Tax Law.

11. Crawford & Moses Digest of the Statutes of Arkansas, Secs. 10204, *et seq.* provide a remedy for the collection of overdue taxes from corporations in all cases in which taxes may be due "in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, Section 10208 thereof also provides: * * * "and where for any reason the property on which said taxes may have accrued shall not have been assessed, the court shall refer the matter of such assessment to the assessor of the county in which said property may lie, who shall make his assessment for any past year or years mentioned in the order of reference, and shall return the same into court; and in case the property shall belong, or have belonged, to any delinquent railroad company, the court shall in like manner refer the assessment of said property to the proper officer or board of officers or commissioners, whose duty it shall be, at the time of the making of said reference, to assess property of like kind, and

they shall report their assessment to the court, and the court shall have power to hear testimony and to change said assessment as justice and equity may require."

12. The State Supreme Court held that the 1921 assessment was invalid also for the reason that it was not made directly by the Tax Commission on railroad property but by the County Assessor pursuant to a letter written to him by the Secretary of that Commission.

13. The foregoing statute provided a remedy whereby the court had power, by legislative direction, to make a new assessment as against the respondents whereby not only such defect in the 1921 assessment of railroad property but also the failure of the assessing authorities to make the assessment at full value for all taxing units could have been remedied. Instead of doing this, the Arkansas Supreme Court held the statute inapplicable because the assessment would be made pursuant to the orders of a Federal Court instead of the orders of a State Court. The Supreme Court said:

> "It is further contended by counsel for the plaintiff that these actions were brought under the State (Crawford & Moses' Digest, 10204 *et seq.*) authorizing suits in equity to be brought against corporations for the collection of overdue taxes, and that there should be a recovery in accordance with the valuation directed by the Federal Court judgment, even though it be found that the assessment was not in accordance with the judgment. The courts of the State are not bound to that

extent by the judgments of the Federal court. Under the statute referred to, the courts are authorized and empowered to adjudicate and enforce collection of delinquent taxes which are authorized by the laws of the State—not those merely directed by the judgment of another court."

14. This is not merely the construction of a State statute; for it construes in no sense the meaning of the terms of the act. It is a flat denial of the power and jurisdiction of a Federal Court to make an order involving the taxing laws of the State at least so far as the operation of this statute is concerned. Although the Federal mandamus stands unreversed and unappealed from, and is only collaterally attacked, it is denied any standing whatever and treated as a nullity when its effect as *res adjudicata* as to the liability of taxable property in Craighead County to full value assessment is brought in question. It is equivalent to holding that a State remedy cannot be employed in the State courts to enforce rights determined by a Federal judgment unless the State courts be so minded. This is clearly a decision against the validity of an authority of the United States and denies to the Federal judgment due force and effect.

Importance and Novelty of Questions Presented.

15. The cases are numerous on the question of the power of Federal Courts to issue writs of mandamus affecting taxes. But we have been

unable to find a decision by this or any other court on the question of the status of assessments for taxation made pursuant to such a mandamus when challenged in a State court in a subsequent proceeding to enforce the collection of taxes based on such assessments. There are numerous other instances of similar orders of mandamus in Arkansas, and the question is one of great importance in the State. The question has also been greatly embarrassed on account of the conflict between decisions of the Circuit Court of Appeals and the Supreme Court of Arkansas on the subject. Moreover, the refusal of the Arkansas Supreme Court to permit a new full value assessment under the Arkansas Corporation Overdue Tax Law merely because the right to such full value assessment had been determined by a Federal Court presents a question that we believe has never before been decided.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Arkansas, commanding said court to certify and send to this court a full and complete transcript of the record and all proceedings of said court in the said cause entitled "State of Arkansas, *ex rel.,* J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, appellant, and St. Louis-San Francisco Railway Company and Missouri-Pacific Railroad Company, Appellees," to the end that the said cause may be reviewed and determined by this

court, as provided by law; and your petitioner prays that the judgment of the said Supreme Court of Arkansas in the said cause be reversed, and the cause remanded with directions to enter judgment for petitioner herein.

And your petitioner will ever pray, etc.,

STATE OF ARKANSAS, EX REL., J. S. UTLEY,
Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas,
By J. S. UTLEY, *Attorney General.*

ASSIGNMENT OF ERRORS.

(1) The Arkansas Supreme Court misconstrued the Federal mandamus and thereby denied it full faith and credit in holding that assessments for taxation made prsurant to the Federal mandamus were required to be fixed at the full valuation of the property assessed, not only for county but also for state, municipal and school purposes. The proper construction of the mandamus was that it required full valuation assessment for county purposes only.

(2) The Arkansas Supreme Court denied the Federal mandamus full faith and credit in misapplying its own interpretation of the Federal mandamus by holding that a failure to make full value assessments for all taxing districts as well as the county invalidated a full value assessment for the county, although under any possible interpretation of the mandamus the county assessment would have been placed at full value.

(3) The Arkansas Supreme Court denied the validity of the Federal judgment in mandamus and refused to give it full faith and credit when it refused to permit the mandamus to be used as the basis for a new assessment under the Arkansas Corporation Overdue Tax Statute.

BRIEF ON PETITION FOR WRIT OF CERTIORARI.

I. The jurisdiction of the United States Supreme Court—the existence of a Federal Question.

Recent decisions determine that, since the 1916 act, the proper method of reviewing a failure or refusal of a State Supreme Court to give full faith and credit to a Federal judgment forming the foundation of a suit filed in a State Court is by certiorari and not by writ of error. *Myers* v. *International Trust Co.,* decided Nov. 12, 1923, 263 U. S. 64, 44 Sup. Ct. 68 L. Ed. 100; *Supreme Lodge, K. P.* v. *Meyer,* decided April 28, 1924, — U. S. —, 44 Sup. Ct. 432, 68 L. Ed. 486.

In the determination of what constitutes or enters into the due force and effect of a Federal judgment, three distinct questions or inquiries arise: *First,* the power or jurisdiction of the Federal Court to render the judgment; *secondly,* the proper construction or interpretation of the judgment; and, *thirdly,* the effect of that construction or interpretation upon the right to recover in the case pending in the State court in which the Federal judgment is pleaded.

In the present case the State Supreme Court has admitted the power and jurisdiction of the Federal Court to render the judgment of mandamus, except with respect to the Arkansas Corporation Overdue Tax Statute, but has denied it full faith

and credit in the second and third particulars mentioned in the preceding paragraph. It has misconstrued the judgment in mandamus. It has, moreover, misapplied its own construction in holding that it has the effect of invalidating the taxes here sued for. It has denied that the Federal judgment has any force or effect whatever under the Arkansas Corporation Overdue Taxes Statute.

The erroneous interpretation of a Federal judgment denies it due force and effect as much as would a denial of the power of the Federal Court to render a judgment. Paying lip-service to the power of a court is of little moment if the exercise of that power may be rendered unavailing by misconstruction of a judgment rendered by it. Thus, in *Avery* v. *Popper,* 179 U. S. 305, 314, the court said that a writ of error will lie to a State court "if the validity or *construction* of the judgment of the Federal Court, or the regularity of the proceedings under the execution, are assailed."

In *Tullock* v. *Mulvane,* 184 U. S. 497, 508, where the court, after holding that it had the right to review the State Supreme Court's interpretation of a bond given in a Federal suit, said:

> "In *Mayers* v. *Block,* 120 U. S. 206, the case came to this court on error to a State court, and involved the correctness of the construction by that court of the terms of an injunction bond given in a court of the United States. This court treated the jurisdiction as one of course, held that the parties signing the bond must be presumed to have

> been cognizant of the order under which the bond was given, and to have contracted in reference thereto, and that the bond should be read in the light of the order, and the court applied to the interpretation of the bond its own views of the applicable principles of law."

In *Central Nat. Bank* v. *Stevens*, (1898) 169 U. S. 465, 18 S. Ct. 415, 42 L. Ed. 819, it is said:

> "Whether due effect has been given by a State court to a judgment or decree of a court of the United States is a Federal question within the jurisdiction of this court, on a writ of error to the Supreme Court of the State. *Crescent City Live Stock Co.* v. *Butchers' Union Slaughter House Co.*, 120 U. S. 141, 7 S. Ct. 372."

In *Riggs* v. *Johnson County* (1867) 6 Wall. (U. S.) 166, 18 L. Ed. 768, the court held that, in case county officials were sued for damages for obeying a writ of mandamus issued out of a Federal Court, the proper course was to plead the commands of the writ in bar of the suit; and that, if their defense was overruled and judgment rendered against them, a writ of error would lie from the Supreme Court of the United States to review the judgment.

In *Cumberland Glass Mfg. Co.* v. *DeWitt* (1915), 237 U. S. 447, 35 S. Ct. 636, 59 L. Ed. 1042, the court said:

> "The Federal question, which is the basis of jurisdiction here, arises upon the plea of *res judicata* to which a demurrer was sus-

tained in the Maryland court of original jurisdiction, which judgment was affirmed by the court of appeals. This presents a Federal question because the plea of former judgment in a Federal Court adjudicating a right of Federal origin asserts a right which, if denied, made the case reviewable here."

In *Radford* v. *Myers,* (1914) 231 U. S. 725, 34 S. Ct. 249, in a suit involving the scope and extent of a Federal judgment, the State Supreme Court held that a particular issue had not been determined by the Federal judgment, as in the case at bar the Arkansas Supreme Court held that the Federal judgment of mandamus did not adjudicate whether the assessment for county general purposes or for all purposes was to be placed at full value. In the Radford case, as in the case at bar, the State Supreme Court, after having determined that the particular issue had not been precluded by the Federal judgment, then proceeded to declare its own decision upon such issue. The Supreme Court entertained jurisdiction of this case upon writ of error, saying:

"From the foregoing statement it is evident that the sole Federal question involved arises from the alleged denial in the judgment of the Supreme Court of Michigan of due effect to the judgment rendered in the United States Circuit Court in Pennsylvania, which is relied upon by the plaintiff in error as *res judicata* of the matters in controversy. Whether such effect was given as the former judgment required presents a Federal question for determination. *National Foun-*

> *dry & Pipe Works* v. *Oconto Water Supply Co.* 183 U. S. 216, 233, 46 L. Ed. 157, 169, 22 Sup. Ct. Rep. 111. To determine this issue we examine the judgment in the former case, the pleadings filed and the issues made, and if necessary to elucidate the matters decided, the opinion of the court which rendered the judgment. *National Foundry & Pipe Works* v. *Oconto Water Supply Co. supra*, 234, and previous cases in this court therein cited."

The present suit was brought under the provisions of the Arkansas Corporation Overdue Tax Statute (Crawford & Moses' Digest of the Statutes of Arkansas, §§10204-10214). If the remedial provisions of that statute were permitted to be used in the present case, the alleged errors and irregularities in the assessments could be cured by a new assessment to be made by the assessing authorities of the state under the direction of the court in this very suit. The complaints were expressly framed with this idea in contemplation, and part of the prayer of the complaint was that, if the assessment sued on be held defective, such a new assessment for taxation be made, as directed by the statute. But the State Supreme Court denied this relief, not on the ground that the terms of the statute did not provide therefor, but solely on the ground that the right to the full value assessment for county purposes only was based on a judgment of Federal origin and that a Federal judgment would not be recognized under the statute.

In plain English this unquestionably means that if the Federal judgment runs counter to the State Supreme Court's view of the laws of the State, it is of no validity and will not be enforced by the State courts. This is a refusal to give full faith and credit to a Federal Court's interpretation of what the State laws are: As to this place of the case, there was drawn in question the validity of an authority exercised under the United States, and the decision was against its validity. It does not involve the question of the construction of the Federal judgment, but rather the power of the Federal Court to render a judgment that could have any effect whatever under the particular State statute. Believing, that under the 1916 act, this kind of error must be reviewed by writ of error and not by certiorari, both methods of review have been prosecuted in the instant case.

It will probably be suggested that the construction of a State statute is a State question to be determined exclusively by the State courts, and is not a Federal question. This is undoubtedly true of the ordinary interpretation of the term of a State statute. But the case at bar presents a different situation. Here no language or terms of the Corporation Overdue Tax Law are construed. The State Supreme Court holds, irrespective of the interpretation of the statute, that a Federal judgment cannot form the foundation for a new assessment under the State Overdue Tax Law; that the power of the Federal Courts is not that extensive. It is in no sense a construc-

tion of the statute but a determination that a Federal judgment can give no rights thereunder, thereby clearly raising a Federal question. No State Supreme Court will be permitted to say that a State statute means one thing when the judgment of a State court is involved and quite a different thing (or rather nothing at all) when the judgment of a Federal Court is in question. An analogous situation arose in *West Side Belt R. Co.* v. *Pittsburgh Const. Co.*, (1911) 219 U. S. 92, 31 S. Ct. 196, 199, where the court said:

> "* * * Indeed, defendant in error asserts that it was assumed by everybody at the trial, but it is insisted that the effect of the act is not a Federal question, but solely one for the state courts. In this we cannot concur. It is an element in the consideration of the question whether due faith and credit were given to the judgment of the circuit court, and we are brought to the consideration of the curative effect of the act."

An identical question was presented in *Kenny* v. *Supreme Lodge of the World, Loyal Order of Moose*, (1920) 252 U. S. 411, 40 S. Ct. 371, 372, where an Alabama Statute expressly provided, that an action under it had to be maintained in a court of competent jurisdiction within the State of Alabama "and not elsewhere" and the Alabama courts refused to give full faith and credit to a judgment of a sister State on a cause of action which had arisen under the statute in Alabama, it was held that, since the statute as construed by the State Supreme Court was in-

valid, and the decision was in favor of the validity of the statute, writ of error and not certiorari was the proper method of review in the United States Supreme Court.

Here the Arkansas statute does not say, either expressly or impliedly, that a Federal judgment shall have no force or effect under it and that only State judgment will have any operation under the statute. However, the Arkansas Supreme Court has so limited the application of the statute. In so doing it committed exactly the same type of error as did the Alabama Supreme Court in the Kenny case, and it is subject to review by the same method.

II. The Arkansas Supreme Court misconstrued the Federal Mandamus.

In its opinion herein (*State* v. *St. Louis S. F. Ry. Co.*, (1923) 162 Ark. 443, 452), the Supreme Court of Arkansas said:

> "When the effect of the judgment of the Federal Court is called in question in subsequent litigation in a State court in which the latter has jurisdiction of the subject-matter and of the parties, the State court may determine for itself the scope and extent of that judgment, though that is a Federal question, which may be reviewed, on proper application, by writ of error or certiorari. An error of the State court in a decision as to the effect of the Federal Court judgment would have to be corrected in that way. It is therefore proper for us to consider, at this point

of the controversy, what is the effect of the judgment of the Federal Court, and this must be determined from an examination of the face of the record in the case in which the judgment was rendered.

The judgment directed that the assessing officers of the county assess at its full value, in money, all property in Craighead County.' This does not specify the mode of assessment, and that is left to the operation of the State laws as construed by this court. It does not direct that the assessment shall extend only to county taxation, but it applies to the whole assessment. This court has decided in a recent case, that, under the Constitution of this State, there can only be one assessment of property for all purposes of taxation—State, county, municipal and school. *Hays v. Missouri Pac. Rd. Co.*, 159 Ark. 101. The effect of the judgment of the Federal Court therefore was to compel the assessing officers to assess all the property in the county at full valuation, in the mode provided by the laws of the State; that is to say, by a single valuation for all taxation purposes. It must be noted, then, that the valuation made by the assessing officers did not conform to the judgment of the Federal Court in assessing at a full valuation, nor in conformity with the laws of the State, as declared by this court, in making such an assessment as would be in uniformity with the assessments of property in other counties. The assessing officers followed neither direction, but made two separate valuations for taxation purposes, which was, according to our decision in the Hays case, *supra*, unauthorized by law."

It is obvious that the State Supreme Court adopt the theory that the Federal Court has left to it power to place its own interpretation upon the Federal judgment, as is shown by the statement: "This [the Federal judgment] does not specify the mode of assessment, and that is left to the operation of the State laws as construed by this court." We construe this to mean: If the Federal judgment had stated in express terms that the assessment should be placed at full value for county taxation only, then the State Supreme Court would have given such effect to the judgment, but, since there is no express language on this point, the State Supreme court is at liberty to construe the Federal judgment in the light of former State decisions under which no mandamus could ever have been rendered rather than in the light of the previous conflicting Federal decisions to which the Federal judgment owed its very existence. In the adoption of this view the State Supreme Court erred.

Although it is true that the mandamus judgment itself does not say in express language that only the assessment for purposes of county taxation is to be placed at full value, yet, in the light of the pleadings and of the entire case, that is exactly what the mandamus judgment does say *by necessary implication.* What is necessarily implied is just as effective as what is expressly stated.

Out of what facts does this necessary implication arise? These facts are four in number: First, the nature of the right possessed by the

Maccabees; secondly, the pleadings in the mandamus proceeding; thirdly, the want of necessary parties defendant to affect the assessment for State, municipal and school purposes; and, fourthly, the fact that the mandamus as construed by the State Court, would deny the equal protection of the laws, which as the assessment was actually made, the Federal judgment did not do.

Nature of the Right Possessed by the Maccabees.

The State was not indebted to the Maccabees in any sum whatever. Nor were any of its municipal corporations or school districts so indebted. The Maccabees had a claim or cause of action against Craighead County only. Therefore, the Maccabees had no right, or even a pretense of a right, to demand that the assessment for taxation for State, municipal or school taxes should be increased to the greater burden of the taxpayers. It was none of the Maccabees' affair whether the State, municipal corporations and school districts collected any taxes or not. From the very nature of their cause of action, the interest of the Maccabees was limited to the county and to county taxes, and they could ask no relief pertaining to any other taxing district. No Federal Court could have thought for a moment that it had the rght to assume control over taxation in municipal corporations and school districts merely because an entirely separate and distinct taxing district, i. e. the county happened to have a creditor.

The Pleadings in the Mandamus Suit. Reference to the petition for mandamus will disclose that the petitioner asserted no right except as a creditor of Craighead County, and that the relief prayed for was merely such relief as would increase the revenues of Craighead County from taxation. By necessary implication this limits the relief sought to Craighead county and its revenues.

Want of Necessary Parties Defendant. The only defendants in the mandamus proceeding were the County Judge of Craighead County who is the chief fiscal officer of the county and the various assessing officials. No official representing the State, municipal corporations and school districts in the handling of their respective fiscal affairs was made a party defendant. In fact, the State could not have been so sued. The Eleventh Amendment to the Federal Constitution would prevent such a suit against the State as such. No creditor of a State could maintain a mandamus proceeding in the Federal Court to compel the payment of a debt due him. No municipal corporation or school district was made a party defendant. It, therefore, follows that for want of necessary parties defendant the Federal Court could not and would not attempt to make an order of mandamus that would compel a full value assessment in taxing districts not even a party defendant in the case and which had never been given any notice or granted any opportunity to be heard. On the other hand, Craighead County was properly in court, and the assessing officials were also in

court. Accordingly, it would be the rankest kind of presumption contrary to the most elementary conceptions of due process of law to conclude that a Federal Court would so far attempt to exceed its power and jurisdiction as to make a mandamus order intended and designed to affect not only the defendant in court, i. e. Craighead County, but also the State, and all municipal corporations and school districts located in Craighead County. It seems clear that the Federal Court rendering this mandamus judgment would, upon opportunity given, be the first to repudiate such a suggestion, as was actually done by Judge Trieber in a letter written by him to the Craighead County assessor which appears at page 32 of the record 20 herein.

Denial of the Equal Protection of the Laws. The State Supreme Court itself limits the effect of the mandamus to Craighead County. To enforce the mandamus, as interpreted by the State Supreme Court, would mean that the State general property tax would be imposed in Craighead County upon a full value assessment of taxable property whereas in the other 74 counties of the State the same State tax would be laid only upon a fifty per centum assessment. This would require a taxpayer having taxable property having a situs for taxation in Craighead County to pay on the same valuation of the same kind of property exactly twice the same burden of taxation as that paid on identical property having its situs for taxation in some other county. In other words, in his capacity as a citizen

of the State and owing to the State no greater duties than another citizen located in some other county the Craighead County citizen would have a double burden of State taxation imposed upon his shoulders. To imagine that the Federal Court in rendering this mandamus order intended such an arbitrary, unjust and indefensible discrimination against Craighead County citizens in respect to State taxes merely because the county was indebted to the Maccabees calls for a reflection upon the sense of justice of that court which we refuse to make. Yet this is the necessary effect of the State Supreme Courts' interpretation of the Federal mandamus. Discriminations in taxation on account of residence have always been held arbitrary and in contravention of the equal protection of the laws. If the State Legislature should do what the State Supreme Court has here done, i. e. direct part of the taxpayers in one taxing district (the State) to pay taxes on a fifty per centum assessment and compel the remainder of the taxpayers of the same taxing district (i. e. the State taxpayers resident in Craighead County) to pay taxes on a full valuation assessment, we feel that no tribunal would hesitate to declare such legislation unconstitutional and void. Why, then, should the State Supreme Court attribute such an intent to the Federal Court in ordering the mandamus?

In 26 R. C. L., p. 245, it is said:

> "The valuation of all property within the same taxing district must be effected on the same basis if the tax is to be uniform in the constitutional sense."

In *Sioux City Bridge Co.* v. *Dakota County*, (123) 260 U. S. 441, 43 S. Ct. 190, the court said:

> "In the case of *Sunday Lake Iron Co.* v. *Wakefield Tp.*, 247 U. S. 350, 352, 353, 38 Sup. Ct. 495, 62 L. Ed. 1154, this court said: 'The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by State officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond* v. *Chicago Union Traction Company*, 207 U. S. 20, 35, 37.'"

In 1 Cooley on Taxation (3rd ed. p. 260), it is said, relative to the requirements of equality and uniformity:

> "But when, for any reason, it becomes discriminative between individuals of the class taxes, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissible. It is immaterial on what ground the selection is made—whether it be because of residence in a particular portion of the taxing district, or because the persons selected have been remiss in meeting a former tax for the purpose, or because of any other reason, plausible or otherwise; for if the principle of selection be once admitted, limits cannot be

set to it and it may be made use of for the purposes of oppression, or even of punishment."

What reason does the Supreme Court of Arkansas assign for its construction of what the Federal Court meant? Nothing, but its own decision in *Hays* v. *Missouri Pac. Rd. Co.*, (1923) 159 Ark. 101, a case which was decided long after the mandamus had been rendered and even after these very suits for collection of these taxes had been filed. The Hays case was the very first case in which the Arkansas Supreme Court laid down the proposition that the equality and uniformity clause of the State Constitution required that there should be but one assessment for taxation, and that that assessment had to be on the same fractional basis for all taxing districts, i. e. the State, counties, municipal corporations and school districts, notwithstanding the very obvious fact that taxing districts of different classes had absolutely no connection whatever with each other, and that all the other States in the Union had uniformly held that the requirement of equality and uniformity applies only to the particular taxing district levying the tax. See Cooley, Taxation (4th ed.), Sec. 313. It must be admitted that the Hays case is the law in this State, but at the same time the fact that that decision is absolutely contrary to what every other State in the Union has held on the same point is at least of value in supporting our assertion that the Federal Court cannot be said to have had the law of the Hays case in

mind when it rendered the mandamus order and that an attempt to apply the law of the Hays case here will defeat, rather than effectuate, the intention of the Federal Court and the true scope and effect of its order. The Federal Court had the right to assume that the Arkansas Supreme Court would not go contrary to the rule laid down by all other States having similar constitutional provisions on equality and uniformity.

The Arkansas Supreme Court states that, by its construction of the Federal mandamus, it saves the principle of State law that there can be but one assessment on the same basis for state, county, municipal and school taxes. But it is clear that this is not so. For when, under the present interpretation of the mandamus, the Arkansas Railroad Commission, as successor to the State Tax Commission, proceeds to assess railroad property, it will have to make two assessments, one at one hundred per centum for Craighead County, and one at fifty per centum for all the other counties. When we look deeper than the surface, it is apparent that the principle of one basis of assessment is not preserved, but we do have the plainest kind of arbitrary discrimination against the taxpayers of Craighead County.

The State Supreme Court is inconsistent. If, as stated in the Hays case, it be a denial of equality and uniformity to permit one school district to have a full value assessment throughout the entire school district where, in any event, all persons liable to pay the tax would be assessed

upon the same basis, how much greater is that denial when a double State assessment is imposed on the citizens of one county only with the result that all persons liable to pay the State tax are not even assessed upon the same basis?

What is the reason for this inconsistency? The Federal mandamus itself is based upon one interpretation of the State equality and uniformity clause, while the decision of the State Supreme Court in this case is based upon a wholly different interpretation.

The Federal doctrine is that, under the Arkansas equality and uniformity provision, a county can be compelled, at the instance of a county creditor, to levy its taxes upon an assessment at full valuation. In other words, it considers the county as a separate taxing unit, having its own obligations, its own taxes and assessments, and capable of being considered separately from the other counties, or the other taxing districts of the State. *United States* v. *Jimmerson*, 222 Fed. 489; *United States* v. *Cargill*, 263 Fed. 856.

The State doctrine is that, under this same constitutional provision, a county cannot be compelled, at the instance of a county creditor, to levy its taxes upon an assessment based upon full valuation, for the reason that one county cannot be considered by itself; that all counties in the State, as well as all other taxing districts of whatever species, must be considered, or else equality and uniformity will be denied. *State* v. *Meek*, 127 Ark. 349. As a corollary from this view, it was

subsequently declared that this inter-connection between all the taxing units of the State was such that the equality and uniformity clause demanded that all assessments for taxation for all taxing districts, irrespective of class or kind, must be on the same fractional basis of assessment, i. e., there can be only one assessment for the purposes of taxation by all the different taxing districts. Such is the effect of the Hays case; and in the Hays case it is affirmatively stated by the State Supreme Court that it is based upon the principle announced in the Meek case.

These antipodal doctrines cannot be harmonized. You cannot take a Federal decision upholding the right to mandamus and a State decision denying the right under identical circumstances and work out a rule of law in harmony with both cases. Such a feat in logic would be beyond the powers of the greatest Greek sophist that ever lived. But has not the State Supreme Court attempted to do this very thing when it claims to recognize the validity and binding effect of the Federal mandamus but at the same time in construing its effect as to matters not covered by express words uses, as its chemical reagent, not the principles of the Federal interpretation in which the mandamus lives, and moves and has its being, but the principles laid down in State decisions under which the mandamus could never have been rendered in the first place?

Full faith and credit to the Federal mandamus requires that the Federal interpretation be followed throughout, for the simple reason that that inter-

pretation furnished the very foundation for the judgment. That view of the effect of the equality and uniformity provision in the State Constitution which made the rendition of the mandamus judgment possible should not, when the interpretation of the mandamus arises, be wholly abandoned and the hostile and contradictory State view substituted. To engraft upon the mandamus a principle derived from a wholly opposite view of the State Constitution and under which it could never have been granted is a denial of full faith and credit which cannot reasonably be justified or executed on the ground that the Federal Court did not attach to its order specific directions stating in express words the detailed application of the principle of the mandamus to each step in the process of assessment.

This inconsistency in reasoning has resulted in a half Federal (recognition of power of Federal Court to order mandamus) and half State (construing effect of mandamus according to hostile and contradictory State decisions) interpretation, thus creating a legal half-breed bearing no resemblance to either parent, and effecting a legal anomaly or curiosity constituting a complete negation of equality and uniformity and a total denial of the equal protection of the laws.

The spirit underlying the Federal order was well as its letter should be considered. A one hundred per cent instead of a fifty per cent faith and credit should be given to the Federal order of mandamus.

III. The Arkansas Supreme Court misapplied its own interpretation of the mandamus by holding that a failure to make a full value assessment for all taxing districts, as well as the county, invalidated a full value assessment for the county, although under any possible interpretation of the mandamus the county assessment would have been placed at full value.

Under the assessment for taxation as actually made the taxpayers were compelled to pay their state, municipal and school taxes upon a fifty per centum valuation and their county taxes upon a full value assessment. If the assessment had been made as the Arkansas Supreme Court held that it should have been made, the taxpayers would have been compelled to pay not only their county but also their state, municipal and school taxes on a full value assessment. To the extent of one-half of the amount of state, municipal and school taxes, the taxpayers were positively benefited by the mode in which the assessment was made.

A favorable error is no ground for complaint. One may complain against prejudicial errors only. This rule is fundamental. It is practical common sense. Yet the Arkansas Supreme Court ignores it when it comes to determining the effect of its interpretation of the mandamus upon the legality of the more favorable assessment which was actually made. That court says (162 Ark. 443, 453):

> "It is contended by counsel for plaintiff that, if it be conceded that the assessment was not made in accordance with the direction of the

> Federal Court judgment, the effect was merely to relieve the taxpayers from a portion of the tax which would have been imposed by a full valuation assessment by omitting the full valuation from the taxes for state, municipal and school purposes, and that they cannot complain at this reduction. Counsel rely on the decision of this court in the recent case of *Summers* v. *Brown*, 157 Ark. 509. That decision does not, however, have the application here that counsel contend for. In that case there had been a valid assessment for all purposes, and the clerk following the erroneous direction of the equalization board and the County Court, reduced the taxes to one-half of the amount originally assessed. We held that the reduction was void, but that the taxpayer could not complain and escape payment of the amount of taxes extended against his property. In the present case there has been no valid assessment, either under the direction of the Federal Court judgment or the laws of the State; therefore the taxpayers are not bound by the illegal assessment."

Now, in *Summers* v. *Brown, supra*, the Arkansas Supreme Court had said:

> "The right to extend taxes levied upon a larger valuation necessarily included the right to extend the taxes upon a less or smaller valuation. The extension of a smaller amount than should have been extended was an irregularity merely, and favored rather than injured appellees."

The point we make here is that this is not a rule of local law which is binding here upon the United

States Supreme Court, but that in determining whether or not due force and effect has been given to a Federal judgment in mandamus by a State Court, the Supreme Court of the United States must necessarily inquire into the soundness of the reasons advanced by the State Courts why a particular effect has not been given to the Federal judgment. It is not permissible to avoid the necessary effect of such a judgment by such an illogical position that one may complain of a favorable error, for such a holding is contrary to all general principles and to one's innate sense of justice.

It can furnish no ground for complaint on the part of the railroads that the state, municipal corporations and school districts failed to collect on a full value assessment in Craighead County but only on the same fifty per centum basis of valuation that was employed elsewhere throughout the State. It is only a person injuriously affected or discriminated against that will legally be heard to make such complaints. 12 C. J., p. 768, Par. 189; *Hendrick* v. *Maryland*, 235 U. S. 610, 35 S. Ct. 140, 59 L. Ed. 203; *Darnell* v. *Indiana*, 226 U. S. 390, 33 S. Ct. 120, 57 L. Ed. 267; *Murphy* v. *California*, 225 U. S. 623, 32 S. Ct. 697, 56 L. Ed. 1229, 41 L. R. A. (N. S.) 153. No one can raise an objection to the constitutionality of a statute on account of discrimination therein, unless he be the person discriminated against, or adversely affected. 6 R. C. L., p. 90, Par. 88; Case note: 32 L. R. A. (N. S.) 954; *Gallup* v.

Schmidt (Ind.), 54 N. E. 384, affirmed in 183 U. S. 300. One who is subject to the lowest rate of taxation cannot complain that a higher rate is imposed on some one else. Re Keeny, 194 N. Y. 281, 97 N. E. 428.

One cannot complain of a judgment on the ground that it is too favorable to him. In 2 R. C. L., p. 237, Par. 197, it is said:

> "A party cannot complain of an error which operates favorably to him and cannot assign as error that the judgment is too favorable to him. Thus the failure of the court to assess disfranchisement as a part of the punishment of a convict is not error of which he can complain. Nor can a party complain that a fine assessed against him is less than the minimum provided for by ordinance. So also, a party against whom a verdict has been rendered cannot complain that it is for less amount than the evidence demands."

Undoubtedly the same principle should and must apply to an assessment for taxation, especially when the remission of part of the liability is attempted to be used as a pretext for evading all of the liability. The only parties that could complain of this failure were the State, the municipal corporations and the school districts, and they could not complain here because they were not parties to the mandamus proceeding and were not, therefore, entitled to any of its benefits.

Nor can it be said that this ruling of the State Supreme Court that the effect of the failure to make a full value assessment for all taxing dis-

tricts as rendering a full value assessment for one purpose only, i. e., county purposes, wholly void so that no recovery can be had thereon is purely a matter of local law and does not involve a Federal question so as to confer jurisdiction on this court. An analysis of the situation shows that this question is inextricably connected with the force and effect to be given to the Federal mandamus. For it is not the law of Arkansas that you can have a full value assessment for all taxing districts. *State* v. *Meek,* 127 Ark. 349. The law of Arkansas is that the basis of assessment for all taxing districts shall be fifty per centum of full valuation. Consequently, to say that it is the local law of Arkansas that under the Federal mandamus there should be a full value assessment for taxing districts is incorrect; for that conclusion is derived not from the local law, which holds that there could be no full value assessment in any event, but from the construction placed on the Federal mandamus by the Arkansas Supreme Court. In other words, there could not arise as a purely local question of Arkansas law the inquiry whether or not under a Federal mandamus the assessments of all taxing districts must be placed on a full value basis, because the very heart and soul of such a question is not, what is the law of Arkansas? but, what is the effect of the mandamus?

To say, in one breath, that it is the local law of Arkansas that no taxing district can have a full value assessment but that the assessment of all taxing districts must be on a fifty per centum

basis, and to say in the next breath, that, when there is a Federal mandamus, it is the local law of Arkansas that all taxing districts must have a full value assessment is a contradiction in terms. There are not two different and contradictory kinds of local law in Arkansas. The truth is that the local law of Arkansas is as first stated, and the second inquiry does not relate to the local law in any manner but pertains rather to the effect to be given to a Federal judgment rendered by a court of competent jurisdiction standing unvacated and unreversed with that judgment rendered under a theory of the law exactly opposite to that held by the State's own courts.

Under the Federal judgment in mandamus it was necessarily a matter of indifference both to the Federal Court and to the Maccabees whether the state, municipal and school taxes were extended on a full value assessment or not; but it was a matter of the essence under that mandamus that the assessment for county purposes be placed at full value, for that was the source from which the debt of the Maccabees could be paid. Now to hold that the taxes extended on the full value assessment for county purposes is void and uncollectable because state, municipal and school taxes were not also extended on a full value assessment manifestly avoids and defeats the operation of the mandamus with respect to the very subject-matter in which it essentially had its force and effect. To justify this annullment of the effect of the mandamus on the theory that as

a matter of local law a State Supreme Court has a right to declare that a favorable error redounding to the benefit of the complaining taxpayer may be urged by him as a reason for not paying his county taxes on the basis fixed by the mandamus is to open up, under the eagis of local law, a wide avenue through which State Courts by the exercise of the proper degree of astuteness may refuse to give full faith and credit to Federal judgments. It is not local law. It is purely a question of the proper procedure under the Federal mandamus, and that is a question of the full faith and credit to be given to a Federal judgment. If the local law had been followed, there would have been no mandamus and this cause would never have arisen. To contend then that the proper construction of a Federal mandamus repudiating the local law is in itself a question of local law, or that a Federal mandamus issued in opposition to the local law is given full faith and credit by determining its effect, limiting its operation and testing the assessment made under it by the terms of this hostile and utterly opposed local law requires an intellectual somersault of which a mind influenced by the ordinary conceptions of logic and reason is incapable. As well as attempt to translate Greek with the aid of a Latin dictionary.

Moreover, the Arkansas Supreme Court did not hold that the assessment was void because it was at full value for county purposes and at half value for other purposes. The railroads tendered into court the amount of taxes that would have

been due on a fifty per centum assessment. If the assessment was utterly void, no taxes whatever could have been collected thereon. The effect of the decision is merely to hold that the additional fifty per centum added to the county assessment was void. In other words, so far as the ordinary assessment was added to on account of the mandamus, it has been adjudged void. Whatever reasoning may have been employed, it is significant that the effect of the State decision is merely to hold that part of the assessment void which could be referred to the Federal mandamus.

Now the railroads were no longer in position to assert that they were complaining because the state, municipal and school taxes had not been doubled; for they had previously paid, without protest or complaint, the state, municipal and school taxes as extended on the ordinary fifty per centum assessment. If there was any error in respect to full value assessments, it did not exist with respect to the county assessment because that would have been placed at full value in any event but in the failure to make a full value assessment for state, municipal and school purposes. By paying the state, municipal and school taxes, on a fifty per centum assessment, the railroads definitely and conclusively waived any and all objections that they might have urged against the assessments on which they were extended. By their payments their interest in those taxes and assessments had ceased and terminated. *Singer Mfg. Co.* v. *Wright,* (1891) 141 U. S. 696, 12 S. Ct. 103. They should not now be permitted to

urge any alleged defects in those assessments to defeat the collection of the county taxes which would have been extended in any event on a full value assessment.

IV. The Arkansas Supreme Court denied the validity of the Federal judgment in mandamus and refused to give it full faith and credit when it refused to permit the mandamus to be used as the basis for a new assessment under the Arkansas Corporation Overdue Tax Statute.

The State of Arkansas has a Corporation Overdue Tax Statute (C. & M. D., Secs. 10204-10214). We shall not encumber this brief with a reprinting of the entire statute with all procedural details but only those sections that have a direct bearing on the present issue.

C. & M. D., Sec. 10204 provides:

> "Where the Attorney General is satisfied from his own investigations or it is made to appear to him by the statement in writing of any reputable taxpayer of the state, that, in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause, that there are overdue and unpaid taxes owing to the state, or any county or municipal corporation, or road district, or

school district, by any corporation upon any property now in this state which belonged to any corporation at the time such taxes should have been properly assessed and paid, it shall become his duty at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which any part of such property as may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated, in which suit or suits the corporation owing such taxes or any corporation claiming an interest in any such property as may have escaped taxation as aforesaid, shall be made a party defendant, and the Governor is authorized to employ any attorneys that may be necessary to assist the Attorney General in such suits; provided, that this Act shall be construed as retrospective as well as prospective in operation."

C. & M. D., Sec. 10207 provides:

"Said complaint shall describe as nearly as may be the property on which said taxes have accrued, and the state, counties, school districts and municipal corporations aforesaid shall have a lien on said property from passage of this Act, for the payment of said overdue taxes, to be enforced by suit as herein provided."

C. & M. D., Sec. 10208 provides:

"On a final hearing the court shall determine the amount of said state, county, school district and municipal taxes, and the

penalties and costs due on the same, if any, and to whom said taxes are payable, and shall decree payment thereof accordingly, and where for any reason the property on which said taxes may have accrued shall not have been assessed, the court shall refer the matter of such assessment to the assessor of the county in which said property may lie, who shall make his assessment for any past year or years mentioned in the order of reference, and shall return the same into court; and in case the property shall belong, or have belonged, to any delinquent railroad company, the court shall in like manner refer the assessment of said property to the proper officer or board of officers or commissioners, whose duty it shall be, at the time of the making of said reference, to assess property of like kind, and they shall report their assessment to the court, and the court shall have power to hear testimony and to change said assessment as justice and equity may require."

C. & M. D., Sec. 10209 provides:

"On such final hearing the court shall render a decree declaring and enforcing said lien for taxes, by sale of the property to which said taxes may have attached. In case of a railroad, the lien shall be decreed against the whole line of the road, including the main line and sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, tunnels, cuts, ties, trestles and bridges, and all lands in the state belonging to such corporations. The court shall decree the said taxes shall be paid within three months after rendering said decree, and

> that in default thereof said defendant shall pay a penalty of ten per centum on the amount of said taxes."

The constitutionality of this statute has been upheld. This statute has been held to give the State a remedy by way of review by the courts where the assessing boards or officers have proceeded *on the wrong basis of valuation,* in omitting some property or element of value, or in adopting the wrong basis of estimating value [*State* v. *K. C. & M. R. & B. Co.,* (1913) 106 Ark. 248, 153 S. W. 614] and that since an amendment to the statute it has authorized a review by the courts in favor of the State when a mistake has been made by the assessing officers in assessing the value of property too low. *State* v. *K. C. & M. Ry. & B. Co.,* (1914) 117 Ark. 606, 174 S. W. 248. An overdue tax suit brought under this statute was sustained by this court in *Ft. Smith Lbr. Co.* v. *State of Arkansas,* (1920) 251 U. S. 532, 40 S. Ct. 304.

It is clear, then, that under the express language of this statute and under the interpretation given to it by the Supreme Court of Arkansas the liability of a corporation for taxes cannot be defeated on the ground that the assessment for taxation was made on the wrong basis or for that matter that there was no assessment whatever, because the statute provides machinery where a new anl legal assessment can be made and all irregularities or defects of any nature whatever may be corrected.

Reference to the complaints filed against the railroads will show that the present suits were expressly brought under this statute, and part of the relief prayed for was that, if there should be found to exist any defect in the assessment, a new assessment be made as prescribed by the statute. The statute provides an ample remedy where a new assessment could have been made at full value for state, municipal and school purposes as well as for county purposes, and the alleged defect that the State Tax Commission did not make the full value assessment in the year 1921 could also have been remedied.

In passing on this contention the Supreme Court of Arkansas said in the present case (162 Ark. 454):

> "It is further contended by counsel for the plaintiff that these actions were brought under the statute (Crawford & Moses' Digest Sec. 10204, *et seq.*) authorizing suits in equity to be brought against corporations for the collection of overdue taxes, and that there should be a recovery in accordance with the valuation directed by the Federal Court judgment, even though it be found that the assessment was not in accordance with the judgment. The courts of the state are not bound to that extent by the judgments of the Federal Court. Under the statute referred to, the courts are authorized and empowered to adjudicate and enforce collection of delinquent taxes which are authorized by the laws of the state, not those merely directed by the judgment of another court.
>
> Each of the defendants in these cases has offered to pay, at the outset, the amount due

upon its property in accordance with the Constitution and laws of this state, and they cannot be compelled, under the statute referred to above, to pay more than that merely because there has been an adjudication of another court. The Chancery Court awarded the plaintiff a decree against each of the defendants for those amounts.

Courts of equity, under the statute referred to, are authorized to enforce only the taxation laws of this state as interpreted by the Supreme Court of this state. The Federal Court did not determine the amount that each taxpayer was to pay, but adjudged that there should be an assessment by the assessing officers at a full valuation, and, as before stated, this was not done."

It is true that a Federal judgment in mandamus, though it has full force and effect as *res adjudicata* as against every other law in the State of Arkansas, pales, trembles and falls prostrate before the Arkansas Corporation Overdue Tax Law? If the mandamus finally adjudicated and determined the liability of property in Craighead County to a full value assessment as opposed to the State Supreme Court's own interpretation of the equality and uniformity clause of the State Constitution, is it not equally effective to fix that same liability under the remedial terms of the Arkansas Corporation Overdue Tax Law which has only a legislative origin and is not provided for by the State Constitution? Yet, in unmis-

takable language, the Arkansas Supreme Court says:

> "Courts of equity, under the statute referred to, are authorized to enforce only the taxation laws of this state *as interpreted by the Supreme Court of this state.* The Federal Court did not determine the amount that each taxpayer was to pay, but adjudged that there should be an assessment by the assessing officers at a full valuation, and, as before stated, this was not done."

This can only mean that, so far as enforcing the collection of taxes under this statute is concerned, the courts of the State are bound only by the interpretations of the State Supreme Court and that an adjudication of the State law made by a Federal Court in a suit properly before it is absolutely of no force and effect and will not have the incidents of *res adjudicata* on the questions of tax liability but becomes a mere nullity. It is true that the mandamus did not set out the exact amount payable by each taxpayer; but it did establish the liability for a full value assessment and that liability the State Supreme Court has refused to recognize so far as any enforcement of it through the instrumentality of the Corporation Overdue Tax Act is concerned. If a State Supreme Court can deny the mandamus effect under this particular statute, it is plainly at liberty to do so with respect to any other state statute. It could say with equal propriety that it would not even entertain a suit to collect taxes or assessments levied or made pursuant to a Federal

mandamus. Then, since state taxes must be collected through the medium of actions in State Courts, it would render all Federal mandamus proceedings utterly futile.

The limitation upon the operation of the mandamus to the effect that only the tax laws of the State as construed by the State Supreme Court would be considered in actions brought under the Overdue Tax Act is nothing more nor less than a declaration that the Federal Courts have no jurisdiction even in cases properly brought before them to determine and adjudicate questions of state law pertaining to taxation.

It is well settled that where a Federal Court has jurisdiction of a controversy by reason of the diversity of citizenship of the parties, it has power to decide all questions of state law that may be raised therein, nor is it compulsory upon the Federal Court, upon pain of rendering its judgment a nullity, to follow state decisions as to the state law.

Texas Co. v. *Brown*, (1922) 258 U. S. 466, 42 S. Ct. 375.

Siler v. *Louisville & N. R. Co.*, (1909) 213 U. S. 175, 29 S. Ct. 451.

Louisville & N. R. Co. v. *Garrett*, (1913) 231 U. S. 298, 34 S. Ct. 48.

Southern Ry. Co. v. *Watts*, (1923) 260 U. S. 519, 43 S. Ct. 192.

Wichita R. & Light Co. v. *Public Utilities Commission of Kansas*, (1922) 260 U. S. 48, 43 S. Ct. 51.

A closely analogous situation is presented by the cases which hold that a State Court must give full faith and credit to the judgment of a court of a sister state although the judgment be one that could never have been recovered originally in the courts of the particular state.

Thus, in *Kenney* v. *Supreme Lodge of the World, Loyal Order of Moose,* (1920) 252 U. S. 411, 40 S. Ct. 371, the court said:

> "Moreover, no doubt there is truth in the proposition that the Constitution does not require the state to furnish a court. But it also is true that there are limits to the power of exclusion and to the power to consider the nature of the cause of action before the foreign judgment based upon it is given effect. In *Fauntleroy* v. *Lum,* 210 U. S. 230, 28 Sup. Ct. 641, 52 L. Ed. 1039, it was held that the courts of Mississippi were bound to enforce a judgment rendered in Missouri upon a cause of action arising in Mississippi and illegal and void there. The policy of Mississippi was more actively contravened in that case than the policy of Illinois is in this. Therefore the fact that here the original cause of action could not have been maintained in Illinois is not an answer to a suit upon the judgment. See *Christmas* v. *Russell,* 5 Wall. 290, 18 L. Ed. 475; *Converse* v. *Hamilton,* 224 U. S. 243, 32 Sup. Ct. 415, 56 L. Ed. 749, Ann. Cas. 1913D, 1292. But this being true, it is plain that a state cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to courts otherwise competent. The assumption that it could not do so was the basis of the decision in *International Text Book Co.* v. *Pigg,* 217

U. S. 91, 111, 112, 30 Sup. Ct. 481, 54 L. Ed. 678, 27 L. R. A. (N. S.) 493, 18 Ann. Cas. 1103, and the same principle was foreshadowed in *General Oil Co.* v. *Crain*, 209 U. S. 211, 216, 220, 228, 28 Sup. Ct. 475, 52 L. Ed. 754, and in *Fauntleroy* v. *Lum*, 210 U. S. 230, 235, 236, 28 S. Ct. 641, 52 L. Ed. 1039. See *Keyser* v. *Lowell*, 117 Fed. 400, 54 C. C. A. 574; *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142, 148, 28 Sup. Ct. 34, 52 L. Ed. 143, and cases cited. Whether the Illinois statute should be construed as the Mississippi Act was construed in *Fauntleroy* v. *Lum* was for the Supreme Court of the state to decide, but read as that court read it, it attempted to achieve a result that the Constitution of the United States forbade."

Although the judicial proceedings of Federal Courts are not within the terms of Const. U. S., Art. 4, Sec. 1, requiring a state to give full faith and credit to the judicial proceedings of a sister state, such proceedings must be accorded the same full faith and credit by the State Courts as would be required of judicial proceedings of another state.

Supreme Lodge, K. P., v. *Meyer*, — U. S. —, 44 Sup. Ct. 432, 68 L. Ed. 426.

The declaration of the Arkansas Supreme Court that under the Overdue Tax Act only interpretations of the tax laws of the state made by State Courts would be considered, contravenes the well-established principle that it is the duty of State Courts to give to the judgments of Federal Courts the same effect that the judgment would have

been entitled to if it had been ren ' red by a State Court.

Pittsburgh, C. C. & St. L. Ry. Co. v. *Long Island Loan & Trust Co.*, (1899) 172 U. S. 493, 19 S. Ct. 238.
Hancock Nat. Bank v. *Farnum*, (1900) 176 U. S. 640, 20 S. Ct. 506.
Deposit Bank of Frankfort v. *Frankfort*, (1903) 191 U. S. 499, 24 S. Ct. 154.

For the reasons submitted the judgment of the Supreme Court of the State of Arkansas should be reversed and the cause remanded to that court with directions either to render a judgment for the amount of taxes sued for or to direct the Chancery Court of the State to have a new assessment made on the full value basis of taxable property owned by defendants and located in Craighead County, Arkansas, according to the terms of Arkansas Corporation Overdue Tax Law and that to effect this end the prayer of petition for certiorari to this court should be granted.

Respectfully submitted,

STATE OF ARKANSAS EX REL. J. S. UTLEY,
Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas,

By J. S. UTLEY, *Attorney General.*

A. P. PATTON and
HORACE SLOAN,
Special Counsel for Craighead County.

Jonesboro, Arkansas,
September 8, 1924.

In the Supreme Court of the United States.

October Term, A. D. 1924

STATE OF ARKANSAS, EX REL., J. S. UTLEY, Attorney General of the State of Arkansas, for the Use and Benefit of Craighead County Arkansas, *Petitioners*,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and MISSOURI-PACIFIC RAILROAD COMPANY, *Respondents.*

No. 410

REPLY TO RESPONDENT'S BRIEF ON PETITION FOR CERTIORARI.

Since respondents have raised an entirely new issue and attempted to add new matters to the record by presenting a certified copy of the judgment obtained by the Maccabees against Craighead County, showing its satisfaction of record on April 3, 1924, by the attorneys for the Maccabees, and by asserting that the satisfaction of this judgment in behalf of the Maccabees acts as remittitur

with respect to all their liability for taxes under the mandamus accruing prior to the satisfaction of the judgment, it seems permissible to file a brief in reply to their contention that the present case now presents a "feigned issue" and that the questions presented by us have thus become purely academic.

Since the respondents seek to add new matter to the record, a word of explanation is surely not amiss.

The decision of the State Supreme Court in this case holding that the taxes levied on the assessment made pursuant to the Federal mandamus upon a full value basis for county purposes and a fifty per centum basis for other purposes could not be enforced was rendered during the tax collecting period for the 1923 taxes, collectible from Jan. 1, 1924 to April 10, 1924. The judgment of the Maccabees still remaining unpaid, the 1923 taxes had been levied upon the same kind of assessment as the 1921 and 1922 taxes here sued for.

The railroads having apparently been relieved from the payment of these taxes by the action of the State Supreme Court herein, the other taxpayers of Craighead County who had without

question paid the 1921 and 1922 taxes refused to pay the 1923 taxes levied upon the same basis if the railroads were not going to be made to do so. Complete stagnation in the collection of taxes thus resulted. The collector of revenue had no power to collect taxes except as extended on the tax books. The County Judge of Craighead County could not order the reduction of the county taxes levied upon the full value assessment without running the risk of being in contempt under the Federal mandamus. The assessment had been made as directed by the Federal mandamus and also according to a letter from the Federal Judge. The County Judge could not afford to assume that the District Federal Court would recede from its own order and approve the decision of the State Supreme Court.

In this crises some of the banks and larger taxpayers of the county came to the county's relief by advancing enough money to pay the judgment held by the Maccabees. In exchange for their money they received at par county warrants worth considerably less than their face value in money and unsupported by a Federal mandamus.

The railroads thus seek to avail themselves of a

distressful condition occasioned by their own wrong, as a further reason why they should be upheld in having originally committed that wrong.

If this were an appeal from the judgment of the Federal Court originally granting the mandamus, then the satisfaction of the judgment held by the Maccabees would abate the appeal, by rendering the question academic. See case notes: *Ann. Cas. 1912C, 247; 5 Ann. Cas. 626.* But this is an appeal from a suit brought by the State to recover taxes due by the respondents under the mandmus during the period of time that the mandamus was actually in force. A satisfaction *by the county* of the judgment of the Maccabees cannot under any conceivable view operate as a satisfaction or discharge *by the railroads* of the amounts of taxes which they should have paid the county in the same manner and to the same extent as was actually done by the other taxpayers of the county while the mandamus was in force.

Respondents cite no cases to that effect but seem to assume that the courts will place a premium on delinquency in payment of taxes by holding that, if a taxpayer can manage to defer the payment of his taxes under a mandamus until the

other taxpayers of the taxing district affected have either paid enough taxes or loaned to the county enough money to enable it to satisfy the judgment against it, he will be excused from payment of his portion of the mandamus burden. Such cannot be the law if it is to bear any remote relation either to justice or to the common sense. It would be just as logical to contend that one joint maker of a note can successfully resist a suit by the other joint maker for contribution on the theory that the note was discharged and all liability terminated when the plaintiff joint maker paid the entire obligation out of his individual funds.

The Supreme Court of Arkansas has held otherwise. Thus, in *Thibault v. McHaney, (1917) 127 Ark. 1, 21,* where taxpayers in an improvement district pursued the same course as that followed by respondents here, the court said;

> "Now these recalcitrant taxpayers say they should not be permitted to profit by the fact that they held back and refused to pay until the other property owners paid substantially enough to discharge the joint obligations. The position is wholly untenable, and the doctrine invoked has no application,

> which is based entirely upon the theory of estoppel—that one who pays money voluntarily, and with full knowledge of the facts will not be heard to assert the right to recover it back. In this instance the property owners undoubtedly paid voluntarily with knowledge of the facts, but, as already stated, they paid upon the implied assurance that all of the taxpayers would be required to respond in like proportion, and that any sum in excess of the amount required to discharge the obligations would be refunded."

The remission of overdue taxes does not occur even when the taxing law itself has been repealed! Thus, in *State v. Certain Lands, (1882) 40 Ark. 35, 37,* in a proceeding brought under a overdue tax statute, the court said:

> "Some of the Acts, under which levies were made for some of the years in question, have been repealed, either expressly or by implication. When the taxes had already become due, as in cases where the lands had been assessed, but payment had not been made, a retrospective operation should not be given to the repealing statutes. It cannot be

supposed that the General Assembly intended to remit those taxes."

Under the existing Arkansas Corporation Overdue Tax Statute nunc pro tunct assessments are made by assessing authorities under the direction of the court for prior years regardless of the repeal of the taxing statute under which the liability accrued.

If the satisfaction of the judgment held by the Maccabees operates to destroy the mandamus *ab initio* so as completely to destroy its effect and operation during the period of time that the judgment remained unsatisfied, then, by parity of reasoning, all taxpayers who paid taxes to the county during that period are entitled to a refund for all taxes paid in excess of that amount that would have been paid if there had been no mandamus. This conclusion is unescapable. Yet this is necessarily the only kind of reasoning that can be employed in favor of the proposition that the satisfaction of the judgment in 1924 operates as a removal of the liability of repondents for the taxes of 1921 and 1922.

The fact that there can be no full value assessment for 1924 or subsequent years on account of

the satisfaction of the Maccabees' judgment does not affect the liability therefor for prior years, but it does bring about the conclusion that, unless the railroads are made to pay their part of the taxes in the present suit, they alone of all the taxpayers of Craighead County will have escaped the burden of the mandamus.

Respectfully submitted,

STATE OF ARKANSAS, EX REL., J. S. UTLEY, Attorney General of the State of Arkansas, for the Use and Benefit of Craighead County, Arkansas,

By J. S. UTLEY, *Attorney General.*

A. P PATTON and
HORACE SLOAN,
Special Counsel for Craighead County.

Jonesboro, Arkansas
October 1, 1924.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924 1925

STATE OF ARKANSAS ex rel. J. S. UTLEY, Attorney-General of the State of Arkansas, for the Use and Benefit of Craighead County, Arkansas,

Petitioner,

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and MISSOURI PACIFIC RAILROAD COMPANY,

Respondents.

No. 74

BRIEF FOR RESPONDENTS ON PETITION FOR CERTIORARI.

THOMAS B. PRYOR,
GORDON FRIERSON,
Solicitors for Missouri Pacific Railroad Company.

WILLIAM J. ORR,
EDWARD L. WESTBROOKE,
EDWARD T. MILLER,
Solicitors for St. Louis-San Francisco Railway Company.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. Central 4477.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

STATE OF ARKANSAS ex rel. J. S. UTLEY, Attorney-General of the State of Arkansas, for the Use and Benefit of Craighead County, Arkansas, Petitioner, v. ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and MISSOURI PACIFIC RAILROAD COMPANY, Respondents.	No. 410.

BRIEF FOR RESPONDENTS ON PETITION FOR CERTIORARI.

STATEMENT.

The Maccabees obtained judgment in the District Court of the United States against Craighead County, Arkansas, in the sum of $77,680, in aid of the collection of which mandamus issued out of said Court to compel the assessing authorities of said County to increase the assessment of all property therein for the taxing years 1921 and 1922. Instead of increasing the assessment of all property in the County the assessing authorities merely increased the assessment

of all property for county general purposes, permitting the former assessment to stand for all other purposes.

Respondents paid all taxes assessed against them for the years in question except the county general tax, and tendered payment of the latter on the assessment fixed for all other taxes. This tender was declined and suits were instituted against respondents in the Chancery Court of said County to recover the full amount of unpaid taxes assessed against them. Respondents prevailed in the Chancery Court, and its judgment was affirmed by the Supreme Court of Arkansas February 11, 1924, and motion for rehearing was denied March 10, 1924. 258 Southwestern Reporter 609.

The judgment of the Maccabees against Craighead County was duly satisfied in full on the record April 3, 1924, a duly certified copy of said judgment and its satisfaction being hereto attached as "Exhibit A", appearing in the Appendix, and which respondents pray leave to file and have considered by the Court in support hereof. A copy of said judgment appears as "Exhibit C" to the complaint filed in said Chancery Court, and is the judgment referred to at page 2 of petitioner's brief herein.

The Supreme Court of Arkansas gave full faith and credit to the judgment of the District Court and its mandamus issued in aid thereof. It recognized the

jurisdiction of the District Court over subject-matter and parties in the Maccabee case, and the validity of the judgment and mandamus rendered and issued thereby in the exercise of such jurisdiction. The Supreme Court also recognized that said judgment and mandamus were binding and conclusive upon it.

The Supreme Court of Arkansas interpreted the mandamus according to its plain language, and held that the assessing authorities failed to comply therewith. It held further that the tax payers were bound by an assessment made in accordance with the District Court's mandamus, but because the assessment was not such as was directed by the District Court it was void because neither in compliance therewith nor with the Constitution and laws of the State. The Supreme Court of Arkansas did not fail to give full faith and credit to the judgment and mandamus of the District Court, but refused to approve an assessment made contrary thereto and in a manner prohibited by the Constitution and laws of the State.

BRIEF OF THE ARGUMENT.

I.

The sole object of the assessment held void by the State Court being the enforcement of the Maccabee judgment against the County, the satisfaction by payment of that judgment leaves nothing for review by this Court, and the petition for certiorari should be denied.

From the very nature of the case the satisfaction of judgment does not appear from the record filed by petitioner. It occurred after the decision of the State Supreme Court which was rendered February 11, 1924, and after the motion for rehearing was denied March 10, 1924. The judgment was satisfied of record April 3, 1924. Evidence *dehors* the record is therefore admissible to advise the Court that there is no real and substantial controversy between petitioner and respondents.

"But this court is compelled, as all courts are, to receive evidence *dehors* the record affecting their proceeding in a case before them on error or appeal. * * * It is by reason of the necessity of the case that the evidence by which such matters are brought to the attention of the court must be that, not found in the transcript of the original case, because it oc-

curred since that record was made up. To refuse to receive appropriate evidence of such facts for that reason is to deliver up the court as a blind instrument for the perpetration of fraud, and to make its proceedings by such refusal the means of inflicting gross injustice."

Dakota County v. Glidden, 113 U. S. 222, l. c. 225, 226.

"The fact that there is no controversy between parties to the record ought, in the interest of a pure administration of justice, to be allowed to be shown at any time before the decision of the case. Any other rule would put it in the power of designing persons to bring up a feigned issue in order to obtain a decision of this Court upon a question involving the rights of others who have had no opportunity to be heard."

Little v. Bowers, 134 U. S. 547, l. c. 558.

Among the numerous cases in which this principle has been announced are Singer Manufacturing Co. v. Wright, 141 U. S. 696; American Book Co. v. Kansas, 193 U. S. 49; Gulf, Colorado & Santa Fe Ry. Co. v. Dennis, 224 U. S. 503, and Kendall v. Ewert, 259 U. S. 139.

II.

***No Federal question was decided by the Supreme* Court of Arkansas adversely to the rights of petitioner.**

The writ of mandamus appears at pages 2 and 3 of petitioner's brief. It requires the defendants to assess at its full value in money all property in Craighead County, and to continue said assessment at its full value in money until the judgment in favor of the Maccabees and costs shall have been paid in full. It further recites that as the property in said County had theretofore been assessed at not exceeding fifty per cent of its assessed value the total assessment made under the writ should be at least double the amount of the total assessment theretofore made.

The writ does not provide the method of assessment, that necessarily being left to the operation of the State law. It did not direct that the assessment should extend only to county general taxes, but applies to the entire assessment. This construction of the writ should not be open to controversy. The State Supreme Court held that the effect of the mandamus was to compel the assessing officers to assess all the property in the County at full valuation in the mode provided by the laws of the State—

that is to say, by a single valuation for all taxation purposes. The Court further held that all tax payers would be bound by an assessment made in accordance with the mandamus, but denied the validity of the assessment because the assessing officers disobeyed the mandamus. An assessment made pursuant to the mandamus would, in the opinion of the State Supreme Court, have been valid and in conformity with the State laws as the latter have been uniformly interpreted by the State Courts. What the State Supreme Court held was, that respondents were not bound by an assessment not authorized either by the judgment of the Court or by the laws of the State.

The laws of Arkansas as construed by the Supreme Court of that State in numerous cases provide that there can be only one assessment of property for all purposes of taxation—State, County, Municipal and School. Hays v. Missouri Pacific R. R. Co., 159 Ark. 101; Fort Smith & Van Buren Bridge case, 62 Ark. 461; Bank of Jonesboro v. Hampton, 92 Ark. 492; Drew Timber Co. v. Board, 124 Ark. 569; State ex rel. v. Meek, 127 Ark. 349; Eureka Fire Hose Co. v. Deffenbaugh, 129 Ark. 41. In line with those decisions construing similar Constitutions and laws of other States are Taylor v. Louisville & N. R. R. Co., 88 Fed. 350; Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, and cases therein cited.

Thus it will be seen that, in the suit brought by Craighead County against these respondents to collect taxes based on this assessment, the Supreme Court of Arkansas gave full faith and credit to the Federal judgment and mandamus, declaring that assessments made pursuant thereto would be valid, but refused to enforce these illegal assessments because not made in conformity with the plain requirement of the mandamus.

If the mandamus had required the assessment to be made in the manner adopted by the assessing authorities, as contended for by petitioner, it would have been unenforceable because it would have required the assessing authorities to violate their oath of office in performing an act which it was not their duty to perform, and which under the Constitution and laws of Arkansas they were prohibited from performing. It cannot be presumed, in aid of the erroneous construction given by petitioner to the mandamus, that the District Court would have required these officers so to act. If the language of the mandamus was ambiguous it would be given a construction in harmony with the State Constitution and laws. Being expressed in unequivocal terms it requires no aid in construction, but must be interpreted according to its plain language. The Supreme Court of Arkansas so interpreted it.

In State ex rel. v. Meek, 127 Ark. 349, the Court said:

> "Mandamus is an appropriate remedy to compel a public officer to perform all duties prescribed by law, but the remedy cannot be used as asked in this case, for the purpose of compelling an officer to do that which he is required by the constitutional mandate and the express direction of a superior tribunal not to do."

This principle is tersely expressed by Mr. Chief Justice Waite in Ex parte Rowland, 104 U. S. 604, l. c. 612, as follows:

> "It is also settled that more cannot be required of a public officer by mandamus than the law has made it his duty to do. The object of the writ is to enforce the performance of an existing duty, not to create a new one."

In Supervisors v. United States, 18 Wall. 71, l. c. 77, Mr. Justice Strong expressed the same thought in different language as follows:

> "It is very plain that a mandamus will not be awarded to compel county officers of a State to do any act which they are not authorized to do by the laws of the State from which they derive their powers. Such officers are the creatures of the statute law, brought into existence for public purposes, and having no authority

beyond that conferred upon them by the author of their being. And it may be observed that the office of a writ of mandamus is not to create duties, but to compel the discharge of those already existing."

To the same effect are United States v. County of Clark, 95 U. S. 769, l. c. 773; United States v. County of Macon, 99 U. S. 582, l. c. 591; Brownsville v. Loague, 129 U. S. 493, l. c. 501; and International Contracting Co. v. Lamont, 155 U. S. 303, l. c. 308.

Respondents therefore pray that the petition for certiorari be denied.

THOMAS B. PRYOR,
GORDON FRIERSON,
Solicitors for Missouri Pacific Railroad Company.

WILLIAM J. ORR,
EDWARD L. WESTBROOKE,
EDWARD T. MILLER,
Solicitors for St. Louis-San Francisco Railway Company.

APPENDIX.

Exhibit A.

UNITED STATES OF AMERICA
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

BE IT REMEMBERED, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 18th day of October, Anno Domini, One Thousand Nine Hundred and Twenty, at the United States Court Room in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said Court, the following proceedings were had, to wit, February 17th, 1921:

The Maccabees
vs.
Craighead County } No. 6,160.

Now on this day came the parties, by their respective attorneys, and file herein their stipulation in writing waiving a trial by jury, and the cause being submitted to the Court on oral evidence and the record of the Craighead County Court and the Court being sufficiently advised in the premises,

It is considered, ordered and adjudged that the plaintiff have and recover of and from the defendant the sum of Seventy-seven Thousand Six Hundred and Eighty Dollars, with all its costs herein expended.

April 3rd, 1924.

This judgment satisfied in full.

Rose, Hemingway, Cantrell
& Loughborough,
For Plaintiff.

UNITED STATES OF AMERICA
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

I, SID B. REDDING, Clerk of the District Court of the United States for the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing writing annexed to this certificate is a true, correct and compared copy of the original remaining of record in my office, at Little Rock, Arkansas.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Court, this 22nd day of September, in the year of our Lord, One Thousand, Nine Hundred and Twenty-four, and of the Independence of the United States of America, the One Hundred and Forty-ninth.

(Seal) SID B. REDDING, Clerk.
ATTEST: By Gladys Stannard,
D. C.

SUPREME COURT OF THE UNITED STATES.

No. 74.—October Term, 1925.

State of Arkansas ex rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, Plaintiff in Error,
vs.
St. Louis-San Francisco Railway Company and Missouri Pacific Railroad Company.
} In Error to the Supreme Court of the State of Arkansas.

[November 16, 1925.]

Mr. Justice Stone delivered the opinion of the Court.

Two separate suits, consolidated in the trial court, were brought by plaintiff in error in the Chancery Court for the Western District of Craighead County, Arkansas, pursuant to statute (Section 10,204, *et seq.* of Crawford & Moses Digest) to recover from the defendants overdue county taxes assessed against them for the years 1921-1922.

The assessments in question purport to have been made in compliance with a peremptory writ of mandamus issued by the United States District Court for the Western District of Arkansas. The Maccabees, an incorporated fraternal order, relator in the mandamus proceeding, had previously recovered judgment against Craighead County on certain county warrants in the United States District Court, jurisdiction having been invoked on grounds of diversity of citizenship. The mandamus proceeding, which was brought in aid of the judgment, resulted in an order directing the tax officials having jurisdiction in the premises, "to assess, at its full value in money, all property in Craighead County and to continue said assessment at its full value in money until the judgment of the plaintiff . . . shall have been paid in full; and it appearing that the property in said County has heretofore been assessed at not exceeding 50% of its assessed value, it is ordered that

said mandamus require that the total assessment made hereunder shall be at least double the amount of the total assessment heretofore made." The respondents, in what purported to be a compliance with the mandamus order, assessed all the property in Craighead County, for all taxes except the general county tax, at the old valuation of fifty per cent; but for the general county tax, out of which the judgment of the Maccabees was to be paid, they made a separate assessment on all property at a valuation of one hundred per cent.

In the Chancery Court the defendants contested the validity of the assessment, and judgment was entered for only one-half of the tax assessed against them for general county purposes. On appeal, the Supreme Court of Arkansas held that no tax could be lawfully assessed for those purposes upon a valuation in excess of the fifty per cent. valuation on which the assessment for other taxing purposes was based, and affirmed the judgment below. — Ark. —.

The plaintiff in error invokes the jurisdiction of this Court under Judicial Code, § 237, alleging that the Supreme Court of Arkansas has drawn in question the validity of an authority exercised under the United States and has decided against its validity, in refusing to enforce the collection of overdue taxes upon an assessment ordered by the federal court; and assigns as error that in so doing the state court has refused to give effect to the judgment and mandamus of the district court, in contravention of the judicial power granted to the federal courts by Article 3 of the Constitution, and Acts of Congress pursuant to it, and in contravention of Clause 2 of Article 6 (making the Constitution and laws of the United States the supreme law of the land).

In holding invalid the assessment as made for general county purposes, the Supreme Court of Arkansas disclaimed any purpose to attack collaterally the judgment of the United States District Court, or to deny its full force and effect as rendered. It rested its decision on the narrow ground that the assessment upon the property of defendants in error was not made on a valuation uniform within Craighead County for all purposes of taxation, state, county, municipal and school, as required by the state constitution (Article 16, Section 5; *Hays* v. *Missouri Pacific R. R. Co.*, 159 Ark. 101), and that as made the assessment did not comply with the judgment of mandamus which specifically re-

quired the tax officials to assess at full value all property in Craighead County. Since the court deemed that the assessment complied neither with the requirements of the constitution nor with the directions of the judgment of the district court, it held that there was no denial of the authority of the judgment in holding the assessment invalid under the state constitution.

If the mandamus order had in terms directed the assessment to be made as it was in fact made by the taxing officials, or if the assessment had been held to be invalid on the ground that although made as directed it was not uniform with the valuation employed in other counties of the state, questions would have been presented which are not raised by this record. We might then have had to consider whether the determination of the state court did not, in effect, attack collaterally the judgment of the district court and deny its authority, even though that judgment rested on a different view of the state constitution than that adopted by the Supreme Court of Arkansas. See *United States ex rel.* v. *Jimmerson*, 222 Fed. 489, and *United States ex rel.* v. *Cargill*, 263 Fed. 856.

These are questions which we are not called upon to decide here; for we find no necessary conflict between the mandamus order of the district court and the constitution of the state as interpreted and applied to the assessment by the state supreme court. The district court undoubtedly had jurisdiction to compel the assessing officers of the county to levy a tax for the purpose of securing satisfaction of its judgment. *Memphis* v. *Brown*, 97 U. S. 300; *United States* v. *Fort Scott*, 99 U. S. 152. For that purpose it had jurisdiction to determine what form of assessment would accord with the laws and the constitution of the State of Arkansas and to prescribe the manner in which the assessments should be levied. *Riggs* v. *Johnson County*, 6 Wall. 166; *Prout* v. *Starr*, 188 U. S. 537.

But in directing the assessment to be made within the county on the basis of a uniform valuation, the judgment did not specify the mode of assessment for different tax purposes; it did not direct that the assessment at an increased valuation should be made only for county taxation. Being silent with respect to these details, it must be taken to direct an assessment within the county at full valuation, in accordance with the laws of the state, leaving to be determined, by proceedings appropriately had in either the district court or the state court, the question whether the assessment actually made complied with those laws. No proceedings

were had to secure a modification of the judgment of the district court so that it would direct the assessment to be made in the mode actually employed, or to compel an assessment on a uniform valuation for all tax purposes, on the theory that such uniformity was required by the state law, and in the view, which we adopt, that the judgment required an assessment to be made within the county according to that law.

In that situation we do not find any basis for the contention that the authority of the judgment of the district court was denied or its validity questioned by the determination of the state court that the assessment as made within the county was invalid. The mandamus not having prescribed the particular method of assessing the tax, the state court was left free to determine whether the assessment was made according to law, and in so doing it did not determine any matter which had been adjudicated by the district court or refuse to give full effect to its judgment.

The writ of error is

Dismissed for want of jurisdiction.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

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